

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

CIVIL APPLICATION NO.4206/2012
IN
FIRST APPEAL NO.722/2012

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Ms. Meghamitra Kundu for the Applicant
Mr. Rahul Mehta i/b. KMC Legal Venture for the Respondent No.1.

CORAM : K. K. TATED, J.
DATE : JULY 15, 2015

P.C.:

1. Heard. This Application is preferred by the claimant for withdrawal of amount of Rs.4,27,400/- with accrued interest deposited by the Appellant Insurance Co. in the Trial Court.

2. The learned counsel for the Applicant submits that in an accident which occurred on 05/04/2008, the claimant lost their son Sachin. On the date of accident he was 19 years old and was serving with Raj Charms Printers and was earning Rs.3300/- pm. salary. She submits that on the basis of these facts, the claimant filed Application under section 163 of the Motor Vehicles Act for compensation of Rs.4,26,900/-. She submits that

the Tribunal, on the basis of the evidence on record, held that both the claimants are entitled to total compensation of Rs.4,27,400/- with 8% p.a. interest.

3. The learned counsel for the Applicant submits that the Applicant No.1 is senior citizen. He is not doing any work at present. She further submits that Applicant No.2 is housewife. She submits that it is very difficult for them to bear their do-to-day expenses. She submits that in the interest of justice, this Hon'ble Court be pleased to allow the Civil Application and allow the Applicant to withdraw the amount deposited by the Insurance Co. She submits that if Civil Application is not allowed, irreparable loss, harm and injury will be caused to the Applicant. She submits that the Applicant has good chance of success in the matter.

4. On the other hand, the learned counsel for the Appellant Insurance Co. opposed the Civil Application. He submits that the Tribunal erred in coming to the conclusion that the Insurance Co. is liable to pay compensation. He submits that on the date of accident, the driver of the offending vehicle was not holding a valid license. He submits that the claimants placed on record a driving

license bearing No.MH-04/08-11782 in the name of Milind Sukhadev Kale. He submits that the Insurance Co. examined one Mr. Yogesh Sahebrao Solanki from the office of Regional Transport Office, Thane. The said witness specifically stated that the license bearing No.MH-04/08-11782 was issued in the name of Gafir Abdul Hasan Saiyyed which was valid from 17/03/2008 to 16/03/2009 and not in the name of the driver of the offending vehicle viz. Milind Sukhdeo Kale.

5. On the other hand, the learned counsel for the Appellant submits that the Insurance Co. is not liable to pay any compensation to the Respondent-Claimant. He further submits that the claimant lost their unmarried son who was of 19 years. He submits that the Tribunal ought to have deducted 50% of the amount of dependency instead of 30%. He submits that in any case the compensation awarded by the Tribunal is on higher side. If this Hon'ble Court allows the Applicant to withdraw amount without any security and in case the Appellant succeeds in the appeal, it would be very difficult for them to recover the same. Hence, this Hon'ble Court be pleased to direct the claimants to provide solvent security to the satisfaction of the Trial Court.

6. Heard both sides at length. It is to be noted that in the present proceedings, the claimants lost their son of 19 years. On the day of accident he was earning Rs.3300/- pm and also both the Applicants were dependent on the deceased. It is to be noted that Trial Court specifically held in paragraph 11 of the impugned award that the driver of the offending vehicle was holding license bearing No.MH-04/08-11782. Hence, the Insurance Co. is liable to pay compensation. Whether the Tribunal should have deducted 30% from the dependency, that can be decided at the time of final hearing of the First Appeal.

7. Considering the submissions made by the learned counsel for the Applicant and as both the Applicants have no source of income, they are entitled to withdraw some amount, without furnishing any security, subject to outcome of the First Appeal.

8. Hence, the following order is passed:

a. Applicant No.1 Mr. Shankar Govind Rane and Applicant No.2 Mrs. Suhasini Shankar Rane entitled to withdraw 25% each of the total amount of compensation deposited by the Insurance Co. without furnishing any security, subject to outcome of the First Appeal.

b. Both the Applicants are entitled to withdraw further 20% amount each by providing solvent security subject to the satisfaction of the Trial Court.

c. While accepting the solvent security, the court should hear both sides by issuing notice to the respective parties.

d. Civil Application stands disposed off accordingly.

JUDGE