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

CIVIL APPLICATION NO. 464 OF 2015
IN
FIRST APPEAL NO. 1196 OF 2012

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. T. J. Mendon for the applicant.
Mr. D.R. Mahadik for the respondent.

CORAM : K. K. TATED, J.
DATED : 11/06/2015.

P.C.:

. Heard learned Counsel for the parties.

2 This Application is preferred by the claimant for withdrawal of amount deposited by the Insurance Co.

3 In the present proceeding, in accident which occurred on 12.08.2005, the applicant claimant sustained several injuries as under:

1) Head injury with spleenic rapture.

2) Fracture neck of proximal phalanx metacarpal right thumb.

3) Fracture of base of first metacarpal.

4 The claimant was admitted in the hospital as indoor patient from 12.08.2005 till 19.08.2005. Dr. S. K. Puranik certified that the applicant sustained

26% permanent disability and loss of earning capacity.

5 The learned counsel for the applicant submits that claimant was doing the business of flowers and she used to earn near about Rs.150/- per day. The applicant spent near about Rs.1,00,000/- for medical treatment and hospitalisation. The applicant spent Rs.2000/- per visit for traveling to follow up treatment.

6 The learned counsel for the applicant submits that applicant is facing financial difficulties and therefore, she preferred the Civil Application for withdrawal of amount. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the applicant to withdraw the amount deposited by the Appellant Insurance Co. He submits that in a connected matter arisen from the same accident, this Court by order dated 17.04.2015 in Civil Application no. 463 of 2014 in First Appeal no. 1195 of 2012 allowed the claimant to withdraw 50% amount without furnishing any security. He submits that if the present Civil Application is not allowed, irreparable loss and injury will be caused to the applicant.

7 On the other hand, the learned counsel for the respondent Insurance Co. submits that Insurance Co. is not liable to pay any compensation to the

applicant. He submits that on the date of accident the driver of the offending vehicle was not holding valid licence. Therefore, in view of breaching of terms and conditions of the Insurance Policy, they are not liable to pay and therefore, there is no substance in the Civil Application. Same to be dismissed with costs.

8 I heard both the sides at length. It is to be noted that in the present proceeding the applicant claimant sustained 26% disability and earning capacity. Applicant was in hospital for more than 7 days as indoor patient. Applicant sustained more than Rs.1,00,000/- on her medical treatment. The Tribunal in paragraph 34 of judgment held that Insurance Company has not established that, insured was guilty of willful violation of policy. Considering this fact, I am of the opinion that applicant is entitled to withdraw sum amount during the pendency of the present First Appeal.

9 Hence, the following order.

a) Applicant is permitted to withdraw 50% amount without furnishing any security subject to outcome of the First Appeal.

b) The Tribunal is directed to invest the remaining amount in Fixed deposits of any Nationalised Bank, initially for the period of one year and same to be continued till hearing and final disposal of the First Appeal.

c) Civil application stands disposed off accordingly.

(K.K.TATED, J.)