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

CIVIL APPLICATION NO.463 OF 2015
IN
FIRST APPEAL NO.1195 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 Insurance Co.

CORAM : K. K. TATED, J.
DATE : APRIL 17, 2015

P.C.:

1. Heard. This Application is preferred by the claimant for withdrawal of the amount deposited by the Appellant Insurance Co.

2. The learned counsel for the Applicant submits that in an accident which occurred on 12/05/2005 the Applicant suffered injuries i.e. degloving injury, left foot, fracture humerus left with multiple CLWs. He submits that considering the injuries sustained by the Applicant in an accident, the Applicant preferred an Application under section 166 of the Motor Vehicles Act, 1988 for compensation of Rs.4,50,000/-. He submits that on the date of accident, the Applicant was 28

years old and he was working as a driver and earning Rs.4500/- p.m. The Applicant placed on record medical bills issued by the MGM Hospital and same were produced in evidence of the Billing Assistant Mr. R. B. Dhakne (Exhibit 42). He submits that because of accident he suffered 33% permanent disability. To that effect, the Applicant placed on record certificate Exhibit 53. Because of accident, it is very difficult for him to do his job as a driver. He further submits that the Applicant spent Rs.86,155/- for his treatment. He submits that in view of the above mentioned facts, the Applicant may be allowed to withdraw at least 50% amount without furnishing any security.

3. On the other hand, the learned counsel for the Appellant Insurance Co. vehemently opposed the Civil Application. He submits that on the date of accident, driver of the offending vehicle was not holding valid license. He submits that the driver of the offending vehicle i.e. motor car was not holding the license for a period from 07/08/2003 to 15/08/2005 and same was renewed on 16/08/2005. He submits that admittedly, the driver was not holding a valid license on the date of accident i.e. 12/08/2005. Hence, the Insurance Co. is not liable to pay any compensation.

Therefore, the Civil Application to be dismissed with costs.

4. The learned counsel for the Applicant placed reliance on the judgment of this court in the matter of ***National Insurance Co. Ltd. Vs. Salouni Subhashchandra Nagzarkar & Ors. 2014 ACJ 2762*** to show that though the driver of the offending vehicle was not holding valid license on the date of accident, then also the Insurance Co. is liable to pay compensation.

5. Considering the above mentioned facts and the law declared by this court in the matter of Salouni Subhashchandra Nagzarkar (supra), I am satisfied that the Applicant has made out a case for allowing the Civil Application partly. Hence, the following order:

a. The Applicant is permitted to withdraw 50% of the amount deposited by the Appellant Insurance Co., without furnishing any security, subject to outcome of the First Appeal.

b. Civil Application stands disposed off accordingly.

JUDGE