

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

CIVIL APPLICATION NO.379 OF 2015
IN
FIRST APPEAL NO.526 OF 2014

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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Mr. R. S. Chahal for the Applicant
Mr. C. M. Lokesh for the Respondent

CORAM : K. K. TATED, J.
DATE : JUNE 24, 2015

P.C.:

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

2. The learned counsel for the Applicant submits that in the present proceedings in an accident which occurred on 23/01/2011 the Applicant No.1 and 2 lost their son. On the date of accident, deceased was 25 years old. He was running business and also taking tuitions and thereby earning Rs.20,000/- pm. The learned counsel for the Applicants submits that because of death of their son, they lost their source of income. It is very difficult for them to maintain themselves.

Hence, the Applicants may be permitted to withdraw the amount deposited by the Appellant during pendency of the First Appeal. He submits that if the Application is not allowed, the Applicants will suffer irreparable loss, harm and injury.

3. On the other hand, the learned counsel for the Appellant vehemently opposed the Civil Application. He submits that the Tribunal has awarded compensation on higher side. He submits that the Tribunal has not considered the contributory negligence at the time of deciding the claim of the Applicants. He submits that the Applicants have not placed on record any relevant document to show that the deceased was earning sum of Rs.7500/- pm. from tuitions. He submits that if the Applicants are permitted to withdraw the entire amount without furnishing any security, nothing will survive in the present proceedings. He further submits that if the Appellant succeeds in the present proceedings, it would be very difficult for them to recover the same. Therefore, there is no substance in the Civil Application. Same be dismissed with costs.

4. Heard both sides at length. In the present proceedings, in an accident which occurred on 23/01/2011 the Applicant Nos.1 and 2 lost their son who was of 25 years. At the time of accident he was running business and also taking tuitions. Considering these facts, I am of the opinion that the Applicant is entitled to withdraw sum amount at present without furnishing any security.

5. Hence, the following order:

a. Applicant No.1 Ashokkumar Kundanlal Jain and Applicant No.2 Smt. Bhagwatidevi Ashokkumar Jain are entitled to withdraw 20% amount each without furnishing any security, subject to outcome of the First Appeal.

b. The Tribunal is directed to invest the remaining amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and the same shall be renewed from time to time till hearing and final disposal of the appeal.

c. Civil application stands disposed off accordingly.

JUDGE