

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

**CIVIL APPLICATION NO. 1993 OF 2014
IN
FIRST APPEAL NO. 755 OF 2015**

HDFC Ergo General Insurance Co. Ltd.	... Applicant.
V/s.	
Inarmati Ramratan Lodhi & Ors.	... Respondents

Ms. Yogita Deshmukh i/b M. M. Sathaye for the applicant.
Mr. Neville Deboo for the respondents.

**CORAM : K. K. TATED, J.
DATED : 24/07/2015.**

P.C.:

. Heard learned Counsel for the parties.

2 This application is preferred by Insurance Company for stay of operation and implementation of impugned Award dated 07.05.2013 passed by the Motor Accident Claims Tribunal, Dadara & Nagar Haveli, Silvassa in M.A.C.P. No. 12 of 2013 awarding sum of Rs.15,80,250/- with 7.5% interest per annum by way of compensation.

3 The learned Counsel for the applicant submits that as per earlier order passed by this Court, they already deposited entire awarded amount in the Tribunal.

4 The learned Counsel for the applicant submits that in the present proceeding, the Tribunal failed to consider the contributed negligence

of the deceased at the time of fixing the amount of compensation. She submits that though, the driver of the offending vehicle made party before the Trial Court, the claimant failed to examine the said driver to prove how the accident taken place. She further submits that if the entire amount is withdrawn by the claimants, nothing will survives in the present proceeding. She further submits that they have good chance of success in the present proceeding. She submits that this Hon'ble Court be pleased to allow the present Civil Application by staying the Award dated 07.05.2013 passed by the Motor Accident Claims Tribunal, Dadara & Nagar Haveli, Silvassa in M.A.C.P No. 12 of 2013.

5 On the other hand, the learned Counsel for the respondents-claimants vehemently opposed the present Civil Application. He submits that in the present proceeding, the Insurance Company has filed the appeal on the ground that driver of the offending vehicle was not holding valid licence. He further submits that the Trial Court in paragraph 7 of the impugned Award recorded that the driver of the offending vehicle was holding the valid licence. He further submits that though the driver of the offending vehicle made as a party in the claim petition, the Insurance Company failed and neglected to examine him on the point of contributory negligence. He further submits that the Insurance Company had not brought on record any evidence to show the contributory negligence on the part of the deceased. Hence, there is no question of granting any stay in the present proceeding.

6 The learned Counsel for the respondents-claimants submits that

this Hon'ble Court may allow the respondents-claimants to withdraw the amount. He submits that on the date of accident, the claimant no.2 was one year old and now, she is four years old. He submits that the claimant no.1 has to look after her minor daughter as well as parents of the deceased. Hence, this Hon'ble Court be pleased to allow the applicant to withdraw some amount.

7 Considering the submissions made by learned counsel for the Insurance Company and as the Insurance Company has already deposited the entire awarded amount in the Tribunal, I am satisfied that applicant has made out the case for allowing the civil application.

8 Liberty granted to the respondents claimants to take out appropriate application, if they so desire, for withdrawal of the amount and that application will be decided on its own merits.

9 Hence, the following order.

a) The operation and implementation of impugned Award dated 07.05.2013 passed by the Motor Accident Claims Tribunal, Dadara & Nagar Haveli, Silvassa in M.A.C.P No. 12 of 2013, is stayed till the hearing and final disposal of the First Appeal.

b) The Tribunal is directed to invest the entire amount in Fixed deposits of any Nationalised Bank, initially for the period of one and half year and same to be continued till further orders.

c) Liberty granted to the respondents claimants to take out appropriate application, if they so desire, for withdrawal of the amount and that application will be decided on its own merits.

d) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)