

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

**CIVIL APPLICATION NO. 1163 OF 2015
IN
FIRST APPEAL NO. 336 OF 2015**

The New India Assurance Co. Ltd.	... Applicant.
V/s.	
Mrs. Smita Ravindra Desai & Ors.	... Respondents

Mr. D. R. Mahadik for the applicant.

**CORAM : K. K. TATED, J.
DATED : 17/03/2015.**

PC.:

. Not on board. At the request of Advocate for the applicant Insurance Company, matter is taken on board for urgent orders.

2 The learned Counsel for the applicant submits that the respondents claimants filed execution application no. 293 of 2014. Hence, there is a urgency.

3 This application is preferred by insurance company for stay of operation and implementation of Judgment and Award dated 01.09.2014 passed by the Motor Accident Claims Tribunal, Mumbai in Application No. 1162 of 2008 holding that the respondents claimants are entitled for sum of Rs.10,35,000/- with @7.5% interest by way of compensation.

4 The learned Counsel for the applicant submits that if entire

amount is recovered by the respondent claimant in execution application, nothing survives in the present proceeding.

5 The learned Counsel for the applicant submits that in the present proceeding the Tribunal erred in holding the multiplier of 9 without considering the age of the deceased as well as claimant no.1. He submits that on the date of accident the deceased was 59 years old. Therefore, multiplier should be less than 9. He further submits that the Tribunal has awarded compensation on higher side. He submits that they have good chance of success in the present proceeding. He further submits that if the stay is not granted irreparable loss and injury will be caused to them.

6 The learned Counsel for the applicant submits that insurance company is ready and willing to deposit the entire decretal amount with interest and cost within six weeks from today. Statement is accepted.

7 Considering the submissions made by the learned Counsel for the applicant and as the applicant is ready and willing to deposit the entire decretal amount in the Tribunal, I am satisfied that applicant has made out case for stay.

8 In the present proceeding, in accident which occurred on 12.10.2007 Ravindra Desai expired. On the date of accident, he was 59 years old. He was working as agent of LIC and earning near about Rs. 2,50,000/- per year. The applicant filed application under Section

166 of the M.V. Act claiming sum of Rs.30,00,000/- by way of compensation. Considering, the age of the respondent claimant, I am of the opinion that the original claimant is entitled to withdraw some amount without furnishing any security.

9 Hence, the following order.

a) The operation and implementation of impugned Judgment and Award dated 01.09.2014 passed by the Motor Accident Claims Tribunal, Mumbai in Application No. 1162 of 2008, is stayed on condition that applicant to deposit entire decretal amount with interest and costs in Tribunal within six weeks from today, failing which civil application shall stand dismissed without referring back to the court .

b) If amount is not deposited within stipulated time as stated herein above, respondents claimants are entitled to execute the decree according to law.

c) If amount is deposited within stipulated time as stated herein above, respondent claimant at present is entitled to withdraw sum of Rs.3,00,000/- with interest without furnishing any security.

d) If amount is deposited as stated herein above, Tribunal is directed to invest remaining amount in fixed deposits of any nationalised bank initially for the period of one year and same to be continued till the hearing and final

disposal of First Appeal.

e) Liberty granted to the respondent claimant to prefer appropriate application, if she so desire, for withdrawal of further amount and that application will be decided on its own merits.

f) The Registry is directed to transfer sum of Rs.25,000/- with accrued interest, if any, deposited by the applicant insurance company to the the Motor Accident Claims Tribunal, Mumbai in the account of Application no. 1162 of 2008.

g) Civil Application is disposed of accordingly.

(K.K.TATED, J.)