

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

CIVIL APPLICATION NO.721/2016
IN
FIRST APPEAL (ST) NO. 2379/2016

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. Ketan Joshi for the Applicant

CORAM : K. K. TATED, J.
DATE : FEBRUARY 22, 2016

P.C.:

1. Mentioned. Not on board. At the request of learned counsel for the Applicant, the matter is taken on board for urgent orders.

2. The learned counsel for the Applicant submits that the Respondent claimed filed Execution Application for recovery of the entire awarded amount as per order dated 02/07/2015 passed by the MACT, Kolhapur in MACP No.148/2011. He submits that if entire awarded amount is recovered in the Execution Application nothing will survive in the present proceedings. Hence, there is urgency in the matter.

3. This Application is made by the Insurance Company for stay of the operation and implementation of the impugned judgment and award dated 02/07/2015 passed by the MACT, Kolhapur in MACP No.148/2011.

4. The learned counsel for the Applicant submits that the Tribunal erred in coming to the conclusion that the Respondent-claimants are entitled to Rs.13,61,200/- by way of compensation. He submits that the Tribunal failed to consider the fact that though the Respondent-claimant failed to produce cogent evidence to show the future prospect of the deceased in his service, the Tribunal erred in coming to the conclusion that the claimants are entitled to compensation for future prospect also. He further submits that even the Tribunal has not considered the contributory negligence on the part of the deceased at the time of deciding the compensation payable to them. The learned counsel for the Applicant submits that the Applicant has good chance of success. He submits that if stay is not granted, irreparable loss, harm and injury will be caused to the Applicant. Hence, in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned award till hearing and final

disposal of the appeal.

5. The learned counsel for the Applicant submits that he received instructions from the Insurance Company that they are ready and willing to deposit the entire awarded amount in the Tribunal within 4 weeks from today. Statement is accepted.

6. In the present proceedings, in an accident which occurred on 19/11/2010 the claimant lost their son Yogesh Anand Khandekar, who was 25 years old and was working in Populaun Engineering Works, MIDC Shirol, Kolhapur as grinder cum helper and was earning Rs.7600/- pm. salary. On the basis of his salary and age, the Respondent-claimant filed Application u/s. 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.20 las. As the Respondent-claimant lost their son, who was of 25 years and was earning Rs.7600/- pm. and also there is delay on the part of the Appellant in preferring the appeal, I am of the opinion that both the claimants can withdraw some amount without furnishing any security, subject to outcome of the appeal.

7. Hence, the following order is passed:

a. The operation and implementation of the impugned judgment and award dated 02/07/2015 passed by the MACT, Kolhapur in MACP No.148/2011 is stayed, till hearing and final disposal of the appeal on condition that the Applicant Insurance Company to deposit the entire awarded amount with interest, cost, if any, in the Tribunal within 4 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

b. If the entire awarded amount is not deposited within stipulated time as stated hereinabove, the Respondent-claimants are entitled to execute the award as per law.

c. If the entire awarded amount is deposited within stipulated time as stated hereinabove, the Respondent-claimant No.(1) Ananda Shankar Khandekar and (2) Sou. Mahduri Ananda Khandekar are entitled to withdraw 20% of awarded amount each, without furnishing any security subject to outcome of the appeal.

d. The Tribunal is directed to invest the remaining awarded amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from

time to time till hearing and final disposal of the appeal.

e. Liberty granted to the claimants to make an appropriate Application for withdrawal of further amount, if they so desire, which will be decided on its own merits

f. The statutory deposit, if any, made by the Applicant at the time of filing the First Appeal be transferred to the Tribunal.

g. Civil application stands disposed off accordingly.

JUDGE