

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

**CIVIL APPLICATION NO. 153 OF 2016
IN
FIRST APPEAL NO. 128 OF 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. Abhijeet Desai with Vrushali Maindad for the Applicant.

**CORAM : K. K. TATED, J.
DATED : 11/02/2016**

P.C.:

- . Heard learned Counsel for the Applicant.
- 2 This application is preferred by Respondent owner of the offending vehicle for stay of operation and implementation of the Judgment and Award dated 29.09.2015 passed by the Motor Accident Claims Tribunal, Kolhapur in M.A.C.P No. 510 of 2007 by which the Tribunal held that the respondents-claimants are entitled to Rs.13,05,301/- with 9% interest per annum by way of compensation.
- 3 The learned Counsel for the Applicant submits that the Tribunal has awarded compensation on higher side. He further submits that Tribunal has not considered the evidence on record. He further

submits that Tribunal failed to consider the contributory negligence on the part of the deceased. These facts are not considered. Hence, applicant has good chance of success in the present matter.

4 The learned Counsel for the applicant submits that Applicant Mr. Dattajirao Bhosale is present in court. After taking instructions from the applicant, he made a statement that applicant is ready and willing to deposit the entire awarded amount in the Tribunal, but he requires some time. He submits that applicant is ready and willing to deposit 50% amount within four weeks from today in the Tribunal and remaining amount within twelve weeks.

5 In the present proceeding, in accident which occurred on 20.05.2007, the claimant No.1 lost her husband Ishwar Patil. The deceased was 43 years old. He was working as conductor in M.S.R.T.C. Gadhinglaj Depot. He was getting salary of Rs.9,600/- per month.

6 Considering the facts that claimant no.1 is widow and claimant nos. 2 and 3 are minor sons of deceased at the time of accident and both the sons are taking education, I am of the opinion that claimant no.1 can withdraw some amount without furnishing any security, but subject to the outcome of the First Appeal.

7 Considering the submissions made by learned counsel for the applicant, averments made in civil application and as applicant is ready and willing to deposit the entire amount, I am satisfied that applicant has made out the case for allowing the civil application.

8 Hence, following order is passed:

a) Operation and implementation of the impugned Judgment and Award dated 29.09.2015 passed by the Motor Accident Claims Tribunal, Kolhapur in M.A.C.P No. 510 of 2007 is stayed till the hearing and final disposal of the First Appeal on condition that Applicant to deposit 50% awarded amount including interest and cost in the Tribunal within four weeks from today and remaining awarded amount within 12 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, the respondents-claimants are free to execute the Award according to law.

c) If amount is deposited within stipulated time as stated herein above, the claimant No.1 Smt. Vimal Ishwar Patil is entitled to withdraw sum of Rs.3,00,000/- with accrued interest without furnishing any security, but subject to the outcome of

the First Appeal.

d) The Tribunal is directed to invest the remaining amount in Fixed deposits of any Nationalised Bank, initially for the period of one year and same to be continued till hearing and final disposal of the First Appeal.

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

f) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)