

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2135/2015
IN
FIRST APPEAL NO. 1012/2014

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. Kedar Lad for the Applicant
Mr. Abhijeet Dichwalkar i/b. D. R. Mahadik for the Respondent Nos.1 to 4.

CORAM : K. K. TATED, J.
DATE : FEBRUARY 25, 2016

P.C.:

1. Heard. This application is made by the claimant for allowing them to withdraw sum of Rs.5,71,664/- in the name of applicant No.1 and Rs.3,50,000/- in the name of applicant No.4, during pendency of the first appeal.

2. The learned counsel for the applicant submits that in an accident which occurred on 06/09/2007, the applicant No.1 lost her husband. He submits that on the day of accident the deceased was of 35 years old and was working as an Architect. He was earning near about Rs.3,42,000/- p.a. On the basis of these facts, the applicant filed claim petition u/s. 166 of the Motor Vehicles Act, 1988 for compensation of

Rs.41,10,000/-. He submits that the Tribunal, by impugned judgment and award dated 15/06/2011 awarded sum of Rs.31,71,664/-.

3. The learned counsel for the applicant submits that, being aggrieved by the impugned award, the Appellant Insurance Company preferred the appeal. He submits that pursuant to the order passed by this court, the Insurance Company deposited the entire awarded amount in the Tribunal. He submits that this court, by order dated 30/08/2013 allowed applicant No.1 Smt. Neha Pravin Deshmukh to withdraw sum of Rs.5 lacs without furnishing any security and Rs.3,50,000/- to applicant No.4 Smt. Sharmistha Dhanpal Deshmukh.

4. The learned counsel for the applicant submits that as on today, the applicant No.1 is house-wife. He submits that both the children are taking education. He submits that it is very difficult for the applicant to bare the day-to-day expenses including education expenses of the children. He submits that the applicant No.2 Shweta Pravin Deshmukh is studying in 11th standard at Kolhapur. He submits that it is very difficult for the applicant to pay her college fees as well as day-to-day expenses of the applicant.

Hence, the applicant may be permitted to withdraw the amount.

5. The learned counsel for the applicant submits that, in the alternative of prayer clause (b), this Hon'ble Court be pleased to allow the applicant to withdraw the quarterly interest on the amount deposited by the Appellant which is invested in bank by the tribunal. He submits that if application is not allowed, irreparable loss will be caused to the applicant.

6. On the other hand, the learned counsel for the Appellant Insurance Company vehemently opposed the civil application. He submits that the applicant already withdrew sum of Rs.8,50,000/- pursuant to the order dated 30/08/2013. He submits that, if further amount is withdrawn by the applicant claimant and in case the Insurance Company succeeds in the present proceedings, it would be very difficult for them to recover the entire amount from the claimant. Hence, there is no substance in the civil application. Same be dismissed.

7. The learned counsel for the a Insurance Company submits that if this Hon'ble Court is inclined to allow the applicant to withdraw the

amount, the applicant be directed to provide bank guarantee and/or solvent security.

8. It is to be noted that, the applicant No.1 is a house-wife and she has to maintain her 2 minor children and her mother in law who is senior citizen. The applicant Nos.2 and 3 are taking education.

9. Considering these facts and the reasons stated by the applicant in para 3 of the civil application, I am of the opinion that the applicant has made out a case for allowing them to withdraw some amount. In spite of allowing them to withdraw some amount as applicant prayed in prayer clause (b), I am of the opinion that the applicant may be permitted to withdraw quarterly interest on the fixed deposit, from 01/01/2016 without security.

10. Hence, following order is passed:

- a. The applicant is permitted to withdraw quarterly interest on fixed deposit account as invested by the trial court from 01/01/2016, without security.
- b. Civil application stands disposed off accordingly.

JUDGE