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

CIVIL APPLICATION NO.511/2016
IN
FIRST APPEAL NO. 1272/2012

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. M. R. Deshpande for the Applicant
Mr. S. M. Dange for the Respondent

CORAM : K. K. TATED, J.
DATE : FEBRUARY 15, 2016

P.C.:

1. Heard. This Application is made by the claimant No.2 for withdrawal of the amount deposited by the Appellant Insurance Company.

2. The learned counsel for the Applicant submits that in an accident which occurred on 12/03/2003, the Applicant lost his son Vishal who was working with Micro Devices Metrohm Ltd. and he was drawing salary of Rs.13260/- pm. He was income tax payee. At the time of accident, the deceased was 31 years old.

3. Considering these facts, the Trial Court awarded sum of Rs.19,18,640/- in favour of the

Applicant, father of the deceased. The learned counsel for the Applicant submits that the Applicant is a senior citizen. At present, he does not have any source of income. Hence, this Hon'ble Court be pleased to allow the Applicant to withdraw the awarded amount of his share without furnishing any security. He submits that the Applicant has good chance of success. He submits that if the Civil Application is not allowed, irreparable loss, harm and injury will be caused to the Applicant.

4. On the other hand, the learned counsel for the Appellant Insurance Company vehemently opposed the Civil Application. He submits that in the present proceedings, they are challenging the judgment and award dated 15/02/2012 passed by the MACT, Mumbai on the ground of contributory negligence as well as quantum. He submits that the Tribunal has awarded compensation on higher side. He submits that if the awarded amount is withdrawn by the Applicant and in case the Appellant Insurance Company succeeds in the appeal, it would be very difficult to recover the said amount from the Respondent-claimant. He further submits that if this court comes to conclusion that the Applicant is entitled to withdraw the awarded

amount, they may directed to furnish bank guarantee and/or solvent security, to secure the awarded amount, in case the Appellant succeeds in the appeal.

5. Considering the submissions made by the learned counsel for the Applicant, the averments made in the Application and as the Applicant lost his son, who was 31 years old and was drawing salary of Rs.13260/- pm. at the time of accident and since the Applicant is a senior citizen, I am of the opinion that the Applicant can withdraw sum of Rs.4 lacs with accrued interest without furnishing any security and remaining amount by furnishing solvent security to the satisfaction of the Trial Court. The objection raised by the learned counsel for the Appellant that in case they succeed in the appeal, it would be very difficult for them to recover the awarded amount from the Respondent-claimant, is not tenable because the Applicant claimant is entitled to withdraw some compensation. The tribunal has awarded total sum of Rs.19,18,640/- with 7.5% p.a. interest by way of compensation. Though the Applicant withdraws sum of Rs.4 lacs, more than Rs.15 lacs would be still lying with the Tribunal at present.

6. Hence, the following order:

a) The Applicant Nilkant Subhash Karwarkar is permitted to withdraw sum of Rs.4 lacs with accrued interest without furnishing any security, subject to outcome of the appeal

b) The Applicant is permitted to withdraw further sum of Rs.2,18,640/- with accrued interest by furnishing either bank guarantee or solvent security to the satisfaction of the Trial Court, if same is furnished within 8 weeks from today.

c) Civil application stands disposed off accordingly.

JUDGE