

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

**CIVIL APPLICATION NO. 262 OF 2016
IN
FIRST APPEAL (ST.) NO. 2636 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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Ms. Deepika Motagi a/w Allena Geroqe i/b Res Juris for the Applicant.

**CORAM : K. K. TATED, J.
DATED : 28/01/2016**

PC.:

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

2 This civil application is preferred by Insurance Company for stay of operation and implementation of the Judgment and Award dated 07.10.2015 passed by the Motor Accident Claims Tribunal, Thane in M.A.C.P No. 0100194/2015 awarding sum of Rs.11,02,000/- with 8% interest by way of compensation.

3 The learned Counsel for the applicant submits that respondents-claimants filed execution application. Hence, there is an urgency in the matter.

4 The learned Counsel for the applicant submits that if the entire amount is withdrawn by the respondents-claimants in execution proceeding, nothing will survive in the present matter.

5 The learned Counsel for the applicant submits Tribunal erred in coming to the conclusion that they are liable to pay compensation of Rs.11 lacs to the respondents-claimants. She further submits that at the time of awarding the compensation, the Tribunal failed to consider the decision of the Apex Court in the matter of ***Oriental Insurance Company Ltd. V/s. Meena Variyal & Others reported in 2007 ACJ 1284 SC***. She further submits that the Tribunal erred in considering Rs.7000/- as monthly income of the deceased instead of considering the notional income as there was no documents to support the income drawn by the deceased at the relevant time. She submits that they have good chance of success in the present matter. She submits that if stay is not granted, irreparable loss and injury will be caused to the applicant.

6 The learned Counsel for the insurance company submits that she received instructions from the insurance company that they are ready and willing to deposit entire awarded amount in Tribunal within four weeks from today. The statement is accepted.

7 In the present proceeding, the accident which occurred on 01.02.2015, the respondents-claimants lost their mother Suvarna Rupesh Shinde. At the time of accident, she was 27 years old and was doing job as Nurse at Jeevan Jyoti Hospital, Kalyan. The salary was Rs.7000/- per month.

8 Considering the facts that both the respondents are minor, I am of the opinion that grandfather of claimants Mr. Ashok Mahadev Shinde is entitled to withdraw a sum of Rs.50000/- for maintaining day-to-day expenses of minors.

9 Hence, following order.

a) Operation and implementation of the impugned Judgment and Award dated 07.10.2015 passed by the Motor Accident Claims Tribunal, Thane in M.A.C.P. No. 0100194/2015 is stayed till the hearing and final disposal of the First Appeal on condition that Applicant to deposit the entire awarded amount including interest and cost in the 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, the respondents-claimants are free to execute the Award according to law.

c) If amount is deposited within stipulated

time as stated herein above, grandfather of original claimants Mr. Ashok Mahadev Shinde is entitled to withdraw sum of Rs.50,000/- without furnishing any security for the maintenance of the minor claimants.

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

e) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)