

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

**CIVIL APPLICATION NO. 3185 OF 2015
IN
FIRST APPEAL (ST.) NO. 23168 OF 2012**

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. T. J. Mendon for the applicants.

Ms. Poonam Mittal for the appellant.

CORAM : K. K. TATED, J.

DATED : 08/01/2016

P.C.:

. Heard learned Counsel for the parties.

2 This civil application is preferred by claimants for withdrawal of amount deposited by the Appellant Insurance Company.

3 The learned Counsel for the applicant submits in the accident which occurred on 28.08.2005 applicant lost her husband Rehman Kasam sayyed.

4 The learned Counsel for the applicant submits applicant does not have any source of income. She has to maintain her minor children. Hence, this Hon'ble Court be pleased to allow the applicants to withdraw the amount deposited by the Insurance Company. He submits that if applicant is not allowed to withdraw the amount, irreparable loss

and injury will be caused to the applicants-claimants.

5 On the other hand learned Counsel for the Insurance Company vehemently opposed the present Civil Application. She submits that from the certified copy of FIR Exh.17 Bandra Police Station has registered the Crime No. 403 of 2005 against the drivers of the both motorcycles for the offence punishable under Sections 297, 398 of I.P.C. and under Section 185 of M.V. Act. She submits that FIR discloses that at the relevant time of the accident, the drivers of both the motorcycles were in drunken condition. She submits that in view of these facts, Insurance Company is not liable to pay any compensation. At the most, the claimants can recover the same from the owner of the motor vehicle.

6 I heard both the sides at length. At the time of deciding the issued no.1, the Trial Court in paragraph 6 specifically stated that FIR at Exh.17 discloses the fact that the relevant time of the accident, the drivers of both the motorcycles were in drunken condition. Apart from that though the Trial Court passed Judgment and Award on 07.01.2012, the applicants have not taken any steps for recovery of compensation from the owner of the vehicle.

7 Considering these facts, I am of the opinion

that applicants are not entitled to withdraw the entire amount deposited by the Insurance Company. As the applicant has to maintain her minor children, she can withdraw Rs.1,00,000/-. If applicant wants to withdraw remaining amount, she has to provide the solvent security to the satisfaction of the Trial Court.

8 Hence, following order.

- a) Civil Application is partly allowed.
- b) Applicant No.1 Smt. Akhtari Rahman Sayyed, widow of deceased is entitled to withdraw sum of Rs.1,00,000/- without furnishing any security but subject to the outcome of the First Appeal.
- c) The applicant no.1 Smt. Akhtari Rahman Sayyed is permitted to withdraw further sum of Rs.5,00,000/- with accrued interest by furnishing solvent security to the satisfaction of the Trial Court within eight weeks from today.
- 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) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)