

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

**CIVIL APPLICATION NO. 24 OF 2016
IN
FIRST APPEAL NO. 26 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. S. M. Dange for the applicant.

**CORAM : K. K. TATED, J.
DATED : 13/01/2016**

PC.:

. Heard learned Counsel for the Applicant.

2 This application is preferred by Insurance Company for stay of operation and implementation of the Judgment and Award dated 29.11.2014 passed by the Motor Accident Claims Tribunal, Thane in M.A.C.P. No. 913 of 2004 awarding a sum of Rs.4,17,500/- with interest @ 7% per annum by way of compensation.

3 The learned Counsel for the Applicant submits that Tribunal erred in coming to the conclusion that Insurance Company is liable to pay compensation. He submits that at the time of accident the driver of the motor vehicle was not holding valid licence. He submits that these facts were not considered by the Tribunal at the time of passing the impugned award.

He submits that even Tribunal has awarded compensation on higher side. He submits that they have good chance of success in the present matter. He submits that if the entire awarded amount is recovered by the respondents-claimants by preferring execution application, then nothing will survive in the present proceeding. He submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of impugned Judgment and Award passed by the Tribunal till the hearing and final disposal of the First Appeal.

4 In the present proceeding, the accident which occurred on 05.08.2004, the claimant no.1 lost her husband. The deceased was working as Manager in Hotel Alka at Bhiwandi and he was drawing salary of Rs.3000/- per month. On the basis of these facts, the respondents-claimants filed application under Section 163-A of the M.V. Act claiming the compensation of Rs.4,20,000/-. The Tribunal considering the evidence on record held that the respondents-claimants are entitled to Rs.4,17,500/- by way of compensation. The claimant no.1 is widow and claimant no.2 is minor daughter of the deceased.

4 Considering the submissions made by learned counsel for the appellant and perusing the impugned

Judgment and Award passed by the Tribunal, I am of the opinion that the claimant no.1 is entitled to withdraw some amount without furnishing any security.

5 Hence, following order.

a) Operation and implementation of the impugned Judgment and Award dated 29.11.2014 passed by the Motor Accident Claims Tribunal, Thane in M.A.C.P No. 913 of 2014 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, claimant no.1 Smt. Rekha Bharat Shetty, is entitled to withdraw sum of Rs.1,00,000/- 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) The Registry of this Court is directed to transfer the amount of Rs.25,000/- with interest if any, which was deposited by the applicant at the time of filing of First Appeal, to the Tribunal in the account of M.A.C.P. No. 913 of 2004.

g) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)