

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

**CIVIL APPLICATION NO.612 OF 2016
IN
FIRST APPEAL (ST). NO.4369 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.Yogita Deshmukh for the applicant

**CORAM : K. K. TATED, J.
DATED : 12/02/2016**

PC.:

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

2 This application is preferred by Insurance Company for stay of the operation and implementation of the judgment and award dated 13.3.2015 passed by MACT, Pune in MACP No.610 of 2010 awarding sum of Rs.8,16,000 to the respondent claimant with 6% interest p.a. by way of compensation.

3 The learned counsel for the applicant submits that respondent claimant filed Execution Application. She submits that if entire amount is recovered in Execution Application then nothing will survive in the present proceeding.

4 The learned counsel for the applicant submits that in the present proceeding, driver of the offending vehicle was not holding valid licence on the date of accident. She submits that these facts were considered by the Trial Court in paragraph 22. She submits that the Trial Court erred in relying on the judgments in the matter of *National Insurance Co.Ltd. Vs. Swaran Singh (2004) ACJ 1 SC and National Insurance Co. Ltd. vs. Salouni Subhashchandra Nagzarkar and others (2014) ACJ 2762* and held that the Insurance Company is also liable to pay compensation.

5 The learned counsel for the applicant submits that the Tribunal has awarded compensation on higher side. She submits that Insurance Company failed to prove monthly income of the deceased.

6 The learned counsel for the applicant submits that they have good chance of success in the present matter. She submits that if stay is not granted, irreparable loss will be caused to the applicant. She submits that she received instruction from the Insurance Company that they are ready and willing to deposit entire amount in the Tribunal within four weeks from today.

7 Statement is accepted.

8 In the present proceeding, in an accident which occurred on 30.3.2010 respondent claimant lost their son who was 21 years old. He was working

as a Cook with Appolo Builders and getting salary of Rs.7,000/- and in the evening he was serving at Archana Hotel and was getting Rs.3,500/- per month. On the basis of these facts, respondent claimant filed application under section 166 of the Motor Vehicle Act claiming compensation of Rs.7.0 lacs together with interest.

9 On the above mentioned facts and circumstances and the fact that there is a delay on the part of Insurance Company to file the present First Appeal, I am of the opinion that both the claimants are entitled to withdraw 20% amount without furnishing any security but subject to outcome of the First Appeal. Hence, following order is passed:

a. The operation and implementation of the impugned judgment and award dated 13.3.2015 passed by MACT, Pune in MACP No.610 of 2010 is stayed, till hearing and final disposal of the appeal on condition that the Applicant Insurance Company to deposit the entire awarded amount with interest, cost, if any, in the Tribunal within four weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

b. If the entire awarded amount is not deposited within stipulated time as stated hereinabove, the Respondent-claimants are entitled to execute the award as per law.

- c. If the entire awarded amount is deposited within stipulated time as stated hereinabove, both the Respondent-claimants are entitled to withdraw 20% amount each without furnishing any security subject to outcome of the appeal.
- d. The Tribunal is directed to invest the remaining award amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the appeal.
- e. Liberty granted to the claimants to prefer an appropriate Application for withdrawal of further amount, if they so desire, which will be decided on its own merits
- f. Civil application stands disposed off accordingly.

(K.K.TATED, J.)