

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

**CIVIL APPLICATION NO. 641 OF 2016
IN
FIRST APPEAL (ST) NO. 4564 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. Poonam Mittal for the applicant.

**CORAM : K. K. TATED, J.
DATED : 16/02/2016**

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 operation and implementation of the judgment and award dated 11.06.2015 passed by M.A.C.T. Pune in M.A.C.P. No. 885 of 2011 holding that respondents-claimants are entitled to sum of Rs. 46,04,072/- with 9% interest per annum by way of compensation.

3 The learned Counsel for the applicant submits that respondents-claimants filed execution application in which the Trial Court issued the warrant of attachment. She submits that if the entire amount is recovered by the Respondents-claimants,

then nothing will survive in the present proceeding. Hence, there is an urgency.

4 The learned Counsel for the applicant submits that at the time of awarding compensation, the Tribunal failed to consider the contributory negligence. She further submits that even the compensation awarded by the Tribunal was on higher side. She submits that in the accident, the deceased Mr. Rajesh Chordia had contributed negligence to the extent of 50% and therefore, the Tribunal ought to have deducted 50% compensation on that ground.

5 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.

6 The learned Counsel for the applicant submits that as the Tribunal issued warrant of attachment. Hence, this Hon'ble Court be pleased to stay the operation and implementation of impugned award passed by the Tribunal till the hearing and final disposal of the First Appeal.

7 In the present proceeding, in accident which occurred on 23.06.2011, the claimant No.1 lost her husband and claimant Nos. 2 and 3 their father. At

the time of accident, the deceased was 35 years old. He was earning Rs.40,000/- per month net income. On the basis of these facts, the respondents-claimants filed claim petition under Section 166 of M.V. Act claiming compensation of Rs.60,00,000/-. The Tribunal awarded sum of Rs.46,04072/-.

8 Considering the fact that claimant no.1 is household wife and claimant Nos. 2 and 3 are minor children, who are taking education and as there is delay on the part of Insurance Company for preferring First Appeal, I am of the opinion that Claimant No.1 is entitled to withdraw some amount.

9 Hence, following order is passed:

a) Operation and implementation of the impugned Judgment and Award dated 11.06.2015 passed by the Motor Accident Claims Tribunal, Pune in M.A.C.P No. 885 of 2011 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 four 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 Mrs. Mamata Rajesh Chordiya is entitled to withdraw sum of Rs.5,00,000/- with accrued interest without furnishing any security.

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 remaining amount and that application will be decided on its own merits.

f) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)