

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

**CIVIL APPLICATION NO. 781 OF 2016
IN
FIRST APPEAL (ST.) NO. 5930 OF 2016**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr. Sanjeev Krishnan i/b M/s. Leges Consultus for the applicant.

**CORAM : K. K. TATED, J.
DATED : 26/02/2016**

PC.:

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

2 The learned Counsel for the applicant submits that respondent-claimant filed execution application for recovery of entire awarded amount. He submits that if the entire amount is recovered by the respondent-claimant in execution application then nothing will survives in the present proceeding. Hence, there is an urgency.

3 The learned Counsel for the applicant submits that in accident which occurred on 10.03.2007, the respondent-claimant sustained injuries. He submits that on the date of accident, claimant's age was 16

years. This fact is not considered by the Tribunal at the time of passing impugned Judgment and Award dated 21.01.2015.

4 The learned Counsel for the applicant submits that they specifically raised objection in their Appeal memo about the age of claimant. Those grounds are as under:

“1. The Learned Member erred in ignoring the fact that the respondent no 1 being a minor was barred under the law from driving any type of vehicle and therefore he was unfit to drive any vehicle in a public place.

2. The Learned Member has erred in not probing the aspect of sole negligence on the part of the Respondent No 1 when the Respondent No 1 a minor was driving the motorcycle against the law vehicle and without any valid driving license.

3. The Learned Member has erred in ignoring the fact acknowledged by the Respondent no.1, in his cross examination dated 12-11-2014 that the motorcycle is owned by his father and that he does not hold a valid motor driving license at the time of the incident.”

5 The learned Counsel for the applicant submits that for holding valid licence as per Motor Vehicle Act, age required 18 years. Hence, they have good chance of success in the present matter.

6 The learned Counsel for the applicant submits that if the entire amount is recovered by the respondent-claimant in execution application then it will be very difficult for them to recover the same from the respondent-claimant.

7 The learned Counsel for the insurance company submits that he 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.

8 Considering the submissions made by learned counsel for the applicant, averments made in civil application and ground on which the Appeal is filed by the Insurance Company, I am satisfied that applicant has made out the case for allowing the civil application.

9 Hence, following order is passed:

a) Operation and implementation of the impugned Judgment and Award dated 21.01.2015 passed by the Motor Accident Claims Tribunal, Alibag in M.A.C.P No. 237 of 2007 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 respondent-claimant is free to execute the Award according to law.

c) If amount is deposited within stipulated time as stated herein above, the Tribunal is directed to invest the entire 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.

d) Liberty granted to the respondent claimant to take out appropriate application, if he so desire, for withdrawal of the amount and that application shall be decided on its own merits.

e) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)