

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

CIVIL APPLICATION NO.3548/2015
IN
FIRST APPEAL (ST) NO. 23869/2014

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. Bennet D'costa for the Applicant No.1
Mr. D. S. Joshi for the Respondent

CORAM : K. K. TATED, J.
DATE : JANUARY 7, 2016

P.C.:

1. Heard. This Application is preferred by the claimants for withdrawal of the amount deposited by the Appellant Insurance Co. in the Tribunal.

2. The learned counsel for the Applicant submits that in an accident which occurred on 05/09/2008 the Applicant suffered multiple injuries i.e. disc-prolopx at CW-2, CW-3 with fracture, critical with central cord-compressor, fracture femur right side, fracture mandible. He further submits that the Applicant suffered 65% disability. He submits that on the date of accident, the Applicant was 25 years old. He was a civil contractor. He used to earn Rs.10000/- pm.

3. The learned counsel for the Applicant submits that because of accident he was admitted in hospital on 20/11/2008 and was discharged on 06/01/2009. He further submits that he spent Rs.12,80,972/- towards medical expenses. Those medical expenses were duly proved by the Applicant through evidence of Dr. Sham Patil, PW.6 Exhibit 63 and Dr. N. Jain, PW.3 Exhibit 37. He submits that the Tribunal has granted total compensation of Rs.17,84,200/- which is at lower side. He further submits that the Applicant filed Application u/s. 166 of the Motor Vehicles Act, 1988 for total compensation of Rs.25 lacs. He submits that considering the expenses incurred by the Applicant on medical treatment, this Hon'ble Court be pleased to allow the Applicant to withdraw sum of Rs.12,87,972/- (medical expenses) and Rs.75,000/- towards pains and suffering without furnishing any security. He further submits that for withdrawal of the remaining amount, the Applicant is ready and willing to provide solvent security or bank guarantee to the satisfaction of the Trial Court.

4. On the other hand, the learned counsel for the Appellant Insurance Co. vehemently opposed

the Civil Application. He submits that the Tribunal has awarded compensation on higher side. He further submits that if the amount is withdrawn by the claimant, without furnishing any security, nothing will survive in the present proceedings. He submits that the Appellant has good chance of success in the matter. Hence, the Civil Application be dismissed with costs.

5. Considering the submissions made by the learned counsel for the Applicant and as the Applicant has suffered multiple fracture injuries and 65% disability, I am of the opinion that the Applicant has made out a case for withdrawal of some amount, without furnishing any security, subject to outcome of the First Appeal. The Trial Court, in paragraph 27 of the judgment recorded that the Applicant proved the medical expenses of Rs.12,87,972/-. The Trial Court also awarded sum of Rs.75000/- towards pains and suffering.

6. Considering the reasons given by the Trial Court in paragraph 27 of the impugned award, I am of the opinion that the Applicant has made out a case for allowing the Civil Application, partly.

7. Hence, following order is passed:

- a. The Applicant is entitled to withdraw total sum of Rs.13,62,972/- (Rs.12,87,972/- towards medical expenses and Rs.75,000/- towards pains and suffering) with accrued interest, without furnishing any security, subject to outcome of the First Appeal.
- b. The Applicant is permitted to withdraw further amount by furnishing solvent security or bank guarantee to the satisfaction of the Trial Court, within 12 weeks from today.
- c. If amount is not withdrawn within stipulated time as stated herein above, the Tribunal is directed to invest the remaining amount in a fixed deposit account of any Nationalized bank, initially for a period of one year which will be renewed from time to time till hearing and final disposal of the appeal.
- d. Civil Application stands disposed off accordingly.

JUDGE