

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1182/2015
IN
FIRST APPEAL (ST) NO. 14704/2014

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. D. S. Joshi for the Applicant

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

P.C.:

1. Heard. This Application is made by Insurance Company for stay of the operation and implementation of the impugned award dated 31/10/2013 passed by the Commissioner for Workmen's Compensation and Judge, 5th Labour Court, Mumbai in Application (WCA) No.504/C-152/2009 holding that the Respondent-Claimants are entitled to compensation of Rs.5,37,600/- with 12% p.a. interest from the date of accident till realization.

2. The learned counsel for the Applicant submits that the Trial Court failed to appreciate that the Respondent-Claimants failed to produce any cogent evidence on record to show that the offending vehicle was duly insured with the Applicant Insurance Co. He further submits that

the Trial Court awarded interest @ 12% p.a. from the date of accident .e. 21/04/1999 till realization of the amount, though the claim petition was filed in 2009 i.e. after 10 years of the accident. He further submits that the Trial Court has awarded compensation on higher side. He submits that the Applicant has good chance of success in the matter. He submits that in the interest of justice this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award passed by the Tribunal. If stay is not granted irreparable loss and injury will be caused to the Applicant.

3. The learned counsel for the Applicant submits that he received instructions from the Insurance Co. that they are ready and willing to deposit the entire awarded amount within 4 weeks from today in the office of Commissioner for workmen's compensation and Judge, 5th Labour Court, Mumbai. Statement is accepted.

4. In the present proceedings, in the accident in question, the original claimant sustained several injuries because of which he admitted in KEM Hospital during the period 21/04/1999 to 01/11/1999. Thereafter several years, he

continued OPD treatment as he has sustained fracture injury to his right leg. Because of the said injuries, he sustained 100% loss of earning capacity and also was unable to drive the vehicle. On the date of accident, the deceased was 20 years old. During pendency of the matter, the original Applicant died. His legal heirs were brought on record.

5. Considering these facts and as the Applicant is widow and she has to maintain her 4 minor children as well her in-laws, I am of the opinion that the Applicants are entitled to withdraw some amount, without furnishing any security, subject to outcome of the First Appeal.

6. Considering the submissions made by the learned counsel for the Applicant and the averments made in the Application, I am satisfied that the Applicant has made out a case for allowing the present Civil Application.

7. Hence, the following order:

a. The operation and implementation of the impugned judgment and award dated 31/10/2013 passed by the Commissioner for Workmen's Compensation and Judge, 5th Labour Court,

Mumbai in Application (WCA) No.504/C-152/2009 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 6 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, the Respondent-claimant are entitled to withdraw following amount without furnishing any security subject to out come of the appeal.

i) Claimant No.1 Smt. Shobhavati Foolchand Yadav Rs.2,00,000/-

ii) Claimant No.6 Ramnath Bhagartideen Yadav Rs.50,000/-

iii) Claimant No.7 Smt. Pattidevi Ramnath Yadav Rs.50,000/-

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.

JUDGE