

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

**CIVIL APPLICATION NO. 1070 OF 2015
IN
FIRST APPEAL (ST.) NO. 19056 OF 2014**

New India Assurance Co. Ltd.	... Applicant
V/s.	
Smt. Priti Nitin Makwana & Ors.	... Respondents

Mrs. Jyoti Bajpayee 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 respondents-claimants filed execution application No. 172/2015 for recovery of entire amount. Hence, there is an urgency.

3 This civil application is preferred by Insurance Company for stay of the Judgment and Award dated 26.11.2013 passed by the Motor Accident Claims Tribunal, Mumbai on the ground that Tribunal has awarded excess compensation in favour of respondents-claimants.

4 The learned Counsel for the applicant further submits that accident occurred on 17.09.2006 in which the respondent-claimant sustained injuries. She further submits that the claimant expired on

17.05.2007 i.e. after 9 to 10 months. She submits that there no nexus between the accident and death of original claimant and inspite of that, the Tribunal held that Insurance Company is liable to pay compensation. She submits that claimants failed to produce on record any documentary evidence to prove the income of the deceased. The respondents-claimants failed to produce on record any documentary evidence or medical bills and inspite of that the Tribunal awarded compensation for medical expenses. She further submits that though the original claimant on the date of accident was of 47 years old, the Tribunal has considered the multiplier of 13, which is on higher side. She submits that they have good chance of success in the present matter. She submits that respondents-claimants filed execution application No. 172 of 2015. She submits that if entire amount is recovered by the respondents-claimants in execution application, then nothing will survive in the present proceeding. Hence, in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of impugned Judgment and Award passed by the Tribunal till the hearing and final disposal of the First Appeal.

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 In the present proceeding, in accident which occurred on 17.09.2006 original claimant sustained head injury with displaced fracture of lateral wall of right orbit, fracture fragment is displaced

medically in the extra conal compartment, fracture of posterolateral wall of right maxillary sinuses and right lateral pterygoid plate with bilateral maxillary, ethmoid and sphenoid haemosinus. Not only that, he was admitted in Nair Hospital from 17.09.2006 to 22.09.2006 and again he was admitted at Shanti Nursing Home from 13.10.2006 to 19.10.2006. Thereafter, he was again admitted in Nair Hospital from 19.10.2006 to 27.10.2006.

7 Considering these facts and as there is delay on the part of Insurance Company to file present Civil Application, I am of the opinion that claimants can withdraw some amount without furnishing any security.

8 Hence, following order is passed:

- a) Operation and implementation of the impugned Judgment and Award dated 26.11.2013 passed by the Motor Accident Claims Tribunal, Mumbai in Petition No. 2994 of 2006 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 Smt. Priti Nitin Makwana is entitled to withdraw sum of Rs.1,00,000/- with accrued interest and Claimant No.2 Master Parth Nitin Makwana Rs.50,000/- with accrued interest without furnishing any security, but subject to the outcome of the First Appeal.
- d) The Tribunal is directed to invest the remaining 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.)