

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

**CIVIL APPLICATION NO. 3425 OF 2014
IN
FIRST APPEAL NO. 943 OF 2012**

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. Dilip Bodke for the applicant.

Mr. Nikhil Mehta i/b KMC Legal Venture for the respondent.

CORAM : K. K. TATED, J.

DATED : 08/02/2016

PC.:

. Heard learned Counsel for the parties.

2 This application is preferred by claimant for withdrawal of amount deposited by the Appellant Insurance Company before the Tribunal.

3 In the present proceeding, the accident occurred on 24.09.2007 in which the claimant sustained injuries. Because of that his right leg was amputated above the knee. As per the certificate issued by Dr. Jindal (Exh.40), the applicant sustained 70% permanent disability. At the time of accident, the applicant was employed with Kalyani Carpenter Special Steels in the capacity of Machine Operator. The Applicant was hospitalised during 24.09.2007 to 10.12.2007. Hence, applicant filed

application under Section 166 of M.V. Act claiming compensation to the tune of Rs.20 lacs.

4 After considering the evidence on record, the Tribunal awarded sum of Rs.16,69,474/- with interest @ 9% per annum. The Trial Court awarded sum of Rs.95,550/- towards the medical expenses and also sum of Rs. 1,74,761/- paid by applicant for treatment to the hospital.

5 The learned Counsel for the applicant submits that because of accident he had to insert hydraulic knee joint as per the quotation of Mahavir Enterprises which is at Exh. B page 22 of Civil Application. The applicant has to incur Rs.4,26,400/-.

6 The learned Counsel for the applicant submits that in the interest of justice, this Hon'ble Court be pleased to allow the applicant to withdraw the amount deposited by the Appellant Insurance Company. He submits that if Civil Application is not allowed, irreparable loss will be caused to the applicant.

7 On the other hand, the learned Counsel for the appellant Insurance Company submits that they have challenged the impugned Judgment and Award passed by the Tribunal on the ground of contributory negligence. Hence, amount awarded by the Tribunal is on higher side. He submits that the Tribunal has

considered the multiplier on the basis of permanent disability which is on higher side. He submits that they have good chance of success in the present matter. He submits that if entire amount is withdrawn by the applicant, nothing will survive in the Civil Application. He submits that there is no substance in the present Civil Application and same to be dismissed with costs.

8 It is to be noted that in the present proceeding, the Tribunal has specifically recorded that the applicant has spent Rs. 1,74,761/- plus Rs.95,550/- towards medical expenses. Apart from that, the applicant has placed on record the letter/quotation dated 24.03.2014 given by Mahavir Enterprises for hydraulic knee joint. In that, it is stated that applicant has to bare expenses to the tune of Rs. 4,26,400/-.

9 Considering the quotation dated 24.03.2014 and the amount spent by the Applicant toward his treatment, I am of the opinion that at present applicant can withdraw sum of Rs.8 lacs without furnishing any security, but subject to the outcome of the First Appeal.

10 Hence, following order is passed:

a) Applicant Mr. Ashish Parte is permitted to withdraw sum of Rs.8 lacs without furnishing any security, but subject to outcome of the First Appeal.

b) Liberty granted to the applicant to move for further withdrawal and that application will be decided on its own merits.

c) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)