

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

CIVIL APPLICATION NO.3610/2014
IN
FIRST APPEAL (ST) NO. 23303/2014

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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Ms. Priti Pandey i/b. A. S. Vidyarthi for the Applicant

Ms. Jyoti Bajpae for the Respondent No.1.

CORAM : K. K. TATED, J.
DATE : JANUARY 15, 2016

P.C.:

1. Heard. This Application is made by original opponent No.2 for stay of the operation and implementation of the impugned award dated 25/06/2013 passed by the Commissioner for Workmen's compensation in Application (WCA) No.422/C-110/2012 by which the Commissioner has awarded sum of Rs.8,97,120/- with 12% p.a. interest by way of compensation.

2. The learned counsel for the Applicant submits that they deposited the entire awarded amount in the office of the Commissioner. The learned counsel for the Applicant submits that they

are challenging the impugned award on the ground that the Respondent failed to prove the relationship of employer – employee. Apart from that the claimants failed to prove his monthly salary which he was drawing from the owner of the vehicle. Hence, the Insurance Co. is not liable to pay any compensation. She submits that if entire amount is recovered/withdrawn by the Respondent-Claimant during pendency of the First Appeal, nothing will survive in the present proceedings. She submits that the Applicant has good chance of success in the matter. If stay is not granted irreparable loss and injury will be caused to the Applicant. She 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 till hearing and final disposal of the appeal.

3. On the other hand, the learned counsel for the Respondent-Claimant submits that in the accident in question, the Respondent-Claimant sustained several injuries. On the date of accident the claimant was 39 years old and was earning Rs.8000/- pm as driver. She submits that because of accident he sustained 60% disability. He was admitted in the hospital during the period from

04/11/2011 to 16/11/2011. Hence, this Hon'ble Court be pleased to allow the Respondent-Claimant to withdraw the amount deposited by the Insurance Co.

4. Considering the submissions made by the learned counsel for the Applicant and perusal of the impugned award and as the Respondent-Claimant sustained permanent disability in the accident, I am of the opinion that the Respondent-Claimant is entitled to without 25% amount without furnishing any security, subject to outcome of the First Appeal. For the remaining amount, they can make an appropriate Application, which will be decided on merits.

5. Hence, following order is passed:

a. The operation and implementation of the impugned judgment and award dated 25/06/2013 passed by the Commissioner for Workmen's compensation in Application (WCA) No.422/C-110/2012 is stayed, till hearing and final disposal of the appeal.

b. The Respondent-claimant are entitled to withdraw 25% of the awarded amount, without furnishing any security, subject to outcome of the First Appeal.

c. 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.

d. Liberty granted to the claimants to prefer an appropriate Application for withdrawal of amount, if they so desire, which will be decided on its own merits

e. The statutory deposit, if any, made by the Applicant at the time of filing the First Appeal be transferred to the Tribunal.

f. Civil application stands disposed off accordingly.

JUDGE