

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

CIVIL APPLICATION NO.112/2016
IN
FIRST APPEAL NO. 57/2016

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. R. Mahadik for the Applicant
Mr. S. R. Agarkar i/b. Y. B. Dandekar for the Respondent

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

PC.:

1. Heard. This Application is made by the Insurance Company for stay of the operation and implementation of the impugned judgment and award dated 30/04/2015 passed by the learned Adhoc District Judge, Thane in MACP No.327/2009 holding that the Respondent-claimant is entitled to compensation of Rs.7,80,000/- with 7% p.a. interest.

2. The learned counsel for the Applicant submits that in the present proceedings, the Tribunal erred in coming to the conclusion that the Respondent-claimant is entitled to compensation of Rs.7,80,000/- with interest. He submits that the

deceased was unmarried on the date of accident. He submits that the Tribunal ought to have deducted 50% amount towards his personal expenses. He submits that instead of that the Tribunal has deducted only 1/3rd which is contrary to the settled law. He further submits that though the claimant stated that the deceased Deepak was earning Rs.6000/- to 8000/- pm. by way of salary, the claimant failed to prove the same by placing on record relevant document. Hence, the impugned judgment and award is liable to be set aside. He submits that the Applicant has good chance of success. He submits that if stay is not granted and if the Respondent - claimant recovers/ withdraws the awarded amount, nothing will survive in the present proceedings and irreparable loss, harm and injury will be caused to the Applicant. On the basis of this submission, the learned counsel for the Applicant submits that it is necessary to stay the impugned judgment and award in favour of the Applicant.

3. On the other hand, the learned counsel for the Respondent-claimant vehemently opposed the Civil Application. He further submits that in an accident which occurred on 29/06/2005, the Respondent-claimant lost her son Deepak who was

33 years old. At the time of accident, he was working with a company and was earning Rs.6000/- to 8000/- pm. He submits that the Tribunal, after considering the evidence on record, properly held that the Respondent-claimant is entitled to sum of Rs.7,80,000/- by way of compensation. He submits that the Applicant failed to show sufficient cause for stay of the impugned judgment and award. Hence, the Civil Application for stay be rejected with costs.

4. It is to be noted that in the present proceedings the Respondent-claimant lost her son Deepak who was 33 years old. At the time of accident, he was working with a company and was earning Rs.6000/- to 8000/- pm. To that effect, the Respondent-claimant placed on record income tax returns. Considering these facts and as the claimant No.1 lost her son, I am of the opinion that the Applicant is entitled to withdraw some amount at present without furnishing any security, subject to outcome of the appeal.

5. Hence, following order is passed:

a. The operation and implementation of the impugned judgment and award 30/04/2015 passed by the learned Adhoc District Judge, Thane

in MACP No.327/2009 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 4 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 No.1 Smt. Sagunabai Damodar Darekar is entitled to withdraw a sum of Rs.2 lacs, without furnishing any security subject to outcome of the appeal.

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 make an appropriate Application for withdrawal of further awarded amount, if they so desire, which will be decided on its own merits

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

g. Civil application stands disposed off accordingly.

JUDGE