

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

CIVIL APPLICATION NO.2533/2015
IN
FIRST APPEAL NO. 1425/2010

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. T. J. Mendon for the Applicant
Mr. S. S. Vidhyarthi i/b. S. M. Vidyarthi for the Respondent No.1.

CORAM : K. K. TATED, J.
DATE : FEBRUARY 2, 2016

P.C.:

1. Heard. This application is made by the claimant for withdrawal of the amount deposited by the Appellant Insurance Company.

2. The learned counsel for the applicant submits that in an accident which occurred on 29/05/1994, the applicant sustained several injuries, because of which he was treated in KEM hospital from 30/05/1994 and 07/06/1994 and thereafter in Hinduja Hospital from 07/06/1994 to 03/09/1994. He was again admitted in hospital and was operated. Thereafter he was taking OPD treatment for one year in Hinduja Hospital. He submits that the applicant filed petition u/s. 166 of

the Motor Vehicles Act, 1988 for grant of compensation of Rs. 4 lacs on the ground of injuries sustained by the applicant. Thereafter pending hearing and final disposal of the claim petition, the claim petition was amended and claimant claimed enhanced compensation to the extent of Rs.35 lacs. He submits that because of the said accident, his right hand was imputed. He submits that before the date of accident he was employed in M/s. Project Consultants at Mahakali Nagar, Mulund, Mumbai and was earning Rs.2500/- pm. He submits that because of imputation of his right hand, he is unemployed as on today. He spent Rs.3,17,000/- on medical expenses. Those expenses were duly proved by the applicant by placing on record relevant documents. Same was recorded by the trial court in para 15 of judgment. He submits that since the applicant is unemployed as on today, 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.

3. On the other hand, the learned counsel for the Appellant Insurance Company vehemently opposed

the civil application. He submits that the Tribunal erred in coming to the conclusion that the Insurance Company is liable to pay compensation. The cheque issued by the owner of the offending vehicle towards the premium was dishonoured. Thereafter the owner, without disclosing the fact of accident, paid the premium in cash. Hence, the Insurance Company is not liable to pay any compensation. He further submits that if amount is withdrawn by the applicant without furnishing any security, it would be very difficult for them to recover the same in case they succeed in the appeal. Hence, there is no question of allowing the civil application. Same be dismissed with costs.

4. It is to be noted that, the applicant spent Rs.3,17,000/- for medical expenses. As per the contention of the claimant in the civil application, he is unemployed as on today. The issue, “whether the Insurance Company is liable to pay compensation or not, in view of dishonour of cheque” is covered by the Apex Court judgment in the matter of *Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Ors. 1998 ACJ 123* holding that Insurance Company is liable.

5. Considering the submissions made by the

learned counsel for the applicant and the law laid down by the Apex Court, I am of the opinion that the applicant has made out a case for withdrawal of some amount during pendency of the appeal.

6. Hence, following order is passed:

a. The applicant is permitted to withdraw sum of Rs.5 lacs with accrued interest, without furnishing any security, subject to outcome of the appeal.

b. The Tribunal is directed to invest the remaining 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.

c. Civil application stands disposed off accordingly.

JUDGE