

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

CIVIL APPLICATION NO.1936/2015
IN
FIRST APPEAL (ST) NO. 27202/2014

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. Poonam Mittal for the Applicant

CORAM : K. K. TATED, J.
DATE : JANUARY 4, 2016

P.C.:

1. Heard. This Application is made by the Insurance Company for stay of the operation and implementation of the impugned award dated 11/10/2013 passed by the MACT, Kalyan in MACP No.178/2015 awarding sum of Rs.3,26,500/- with 9% p.a. interest by way of compensation.

2. In the present proceedings, in an accident which occurred on 18/07/2005, Bhagwan Rothe husband of claimant No.1 and father of claimant Nos.2 and 3 expired. On the date of death he was 45 years old and was serving as peon in Glaze Paints Ltd. Kalyan and was drawing salary of Rs.3000/- pm. In addition, he used to sell breads

and confectionery. His total earning was Rs.3500/- to Rs.4000/- pm. On the basis of the said earning the claimants filed petition u/s. 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.5 lacs. The Tribunal, considering the evidence on record held that the claimants are entitled to sum of Rs.3,26,500/- with 9% p.a. interest by way of compensation.

3. The learned counsel for the Applicant Insurance Company submits that the Tribunal erred in coming to the conclusion that the Insurance Company is liable to pay compensation. She submits that on the date of accident, the driver/mechanic was not holding a valid license. Hence, the Insurance Company is not liable to pay compensation. She submits that even the Tribunal has awarded compensation on higher side. She submits that the Applicant has good chance of success. If stay is not granted, irreparable loss, harm and injury will be caused to the Applicant. She submits that if entire award amount is withdrawn by the claimant, nothing will survive in the present proceedings. In the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned award till hearing and final disposal of the appeal.

4. Heard the learned counsel for the Applicant Insurance Company at length. In the present proceedings, the Respondent claimants lost their husband/father deceased Bhagwan in an accident which occurred on 18/07/2005. On the day of accident the deceased was working as a Peon in a company at Kalyan. He was doing his private business also.

6. Considering the reasons given by the Tribunal in the impugned award, I am of the opinion that the Respondent claimants are entitled to withdraw some amount without furnishing any security subject to out come of the appeal.

5. Considering the submissions made by the learned counsel for the Applicant Insurance Company and the averments made in the Civil Application, I am satisfied that the Applicant has made out a case for allowing the Civil Application. At the same time, the Insurance Company has to deposit the entire award amount in the Tribunal within 4 weeks from today.

7. Hence, following order is passed:

a. The operation and implementation of the impugned award dated 11/10/2013 passed by the MACT, Kalyan in MACP No.178/2005 is stayed, subject to the Applicant depositing the entire award amount including interest and cost in the Tribunal within 4 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

b. If amount is deposited within stipulated time as stated hereinabove, the Respondent claimants are entitled to withdraw the amount as under, without furnishing any security, subject to outcome of the appeal:

Claimant No.1 Aruna Bhagwan Rothe - Rs.75,000/-

Claimant No.2 Hemant B. Rothe – Rs. 50,000/-

Claimant No.3 Harshali B. Rothe - Rs.50,000/-

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

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. Civil application stands disposed off accordingly.

JUDGE