

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

CIVIL APPLICATION NO.4070/2014

IN

FIRST APPEAL (ST) NO. 29260/2014

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| 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. Atul B. Gatne for the Applicant

**CORAM : K. K. TATED, J.**

**DATE : JANUARY 20, 2016**

**P.C.:**

1. Heard. This Application This Application is made by the Insurance Company for stay operation and implementation of the impugned judgment and award dated 21/10/2013 passed by the Commissioner for Workmen's and Judge, 4<sup>th</sup> Labour Court, Mumbai in Application (WCA) No.308/C-81/2010 holding that the Respondent-claimant is entitled to compensation amount of Rs.1,20,996/- along with 12% p.a. interest from the date of accident till its realization.

2. The learned counsel for the Applicant submits that if entire awarded amount is recovered/withdrawn in the Execution Application nothing will survive in the present proceedings.

He submits that in the present proceedings, the learned Commissioner erred in coming to the conclusion that the Insurance Company is liable to pay compensation. He submits that the claimant failed to prove the relationship of employer-employee on the date of accident. He submits that, disability certificate in favour of the claimant was issued by one Dr.Khanna, whereas the Respondent-claimant took treatment from Vighnaharta Multi Specialty Hospital, Shiroor. He submits that the said certificate was issued by Dr.Khanna after more 4 years of the accident. He submits that even otherwise the compensation awarded by the learned Commissioner is on higher side. He submits that 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. He submits that he received instructions from the Insurance Company that they are ready and willing to deposit the entire awarded amount in the office of Commissioner within 4 weeks from today. Statement is accepted.

3. Considering the submissions made by the learned counsel for the Applicant and as the Applicant is ready and willing to deposit the entire awarded amount in the office of Commissioner

within 4 weeks from today, I am satisfied that the Applicant has made out a case for allowing the Civil Application.

4. It is to be noted that in the present proceedings the Respondent-claimant was working as a cleaner of the vehicle on 24/12/2008 when the accident occurred, in which the claimant sustained injuries. At the time of accident the claimant was of 35 years and was earning salary of Rs.4000/- pm. Because of accident he was indoor patient from 25/12/2008 to 30/12/2008 in Vighnaharta Multi Specialty Hospital, Shiroor. The claimant also placed on record disability certificate issued by Dr. Khanna to show that he sustained 31% partial permanent disability.

5. Considering the above facts and as there is delay of 283 days in preferring the First Appeal, I am of the opinion that the Respondent-claimant is entitled to withdraw 50% of the awarded amount without furnishing any security subject to out come of the appeal.

6. Hence, following order is passed:

a. The operation and implementation of the impugned judgment and award dated 21/10/2013

passed by the Commissioner for Workmen's and Judge, 4<sup>th</sup> Labour Court, Mumbai in Application (WCA) No.308/C-81/2010 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 Niramuddin Shaikh is entitled to withdraw 50% of the awarded amount, without furnishing any security subject to out come 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 he 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**