

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

CIVIL APPLICATION NO.2868/2015
IN
FIRST APPEAL (ST) NO. 31142/2014

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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Mr. Nikhil Mehta i/b. KMC Legal Venture for the Applicant
Mr. Ramesh Chavanke for the Respondent Nos.1 to 4.

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

P.C.:

1. The learned counsel for the applicant submits that it is not necessary to serve respondent No.5. Statement is accepted. He submits that the Insurance Company has filed the appeal mainly on the ground of quantum and negligence.

2. This application is made by the Insurance Company for stay of the operation and implementation of the impugned award dated 02/04/2013 passed by the MACT, Vasai in MACP No.54/2009 holding that the respondent-claimant are entitled to sum of Rs.18,31,400/- with interest @ 7.% p.a. by way of compensation.

3. The learned counsel for the Insurance Company makes a statement that he received instructions from the Insurance Company that they are ready and willing to deposit the entire awarded amount in the Tribunal within 4 weeks from today. Statement is accepted.

4. The learned counsel for the applicant submits that if entire awarded amount is recovered/ withdrawn by the claimant, nothing will survive in the matter. He submits that the applicant has good chance of success in the matter. 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.

5. The learned counsel for the respondent-claimant submits that in the present proceedings the applicant No.1 lost her husband, who was 44 years old on the date of accident. He was doing business in the name and style M/s. Akram Plastics and was earning Rs.15000/- to Rs.20000/-. He submits that they filed claim petition u/s. 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.15 lacs. He submits that the claimant No.1 is a widow and claimant

Nos.2 and 3 are taking education. He submits that claimant No.1 has to look after her both children as well as her mother-in-law who is a senior citizen. He submits that the applicant may be permitted to withdraw some amount.

6. Considering the submissions made by the learned counsel for the applicant and the averments made in the civil application, I am of the opinion that the applicant has made out a case for allowing the civil application.

7. Hence, following order is passed:

a. The operation and implementation of the impugned judgment and award dated 02/04/2013 passed by the MACT, Vasai in MACP No.54/2009 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 Respondents 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 claimants are entitled to withdraw the amount, as under, without furnishing any security, subject to outcome of the appeal:

1. Mrs. Shamimbano Ashraf Turki Rs. 1.5 lac
2. Mast. Zahir Ashraf Turki Rs. 1 lac
3. Ms. Nilofar Ashraf Turki Rs. 1 lac
4. Mrs. Sakina Nuruddin Turki Rs.1.5 lac

d. 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.

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

f. Statutory deposit, if any made by the applicant Insurance Company at the time of filing the appeal, be transferred to the Tribunal.

g. Civil application stands disposed off accordingly.

JUDGE