

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

CIVIL APPLICATION NO.3980/2015

IN

FIRST APPEAL NO. 1687/2012

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. S. M. Payak for the Applicant

Mr. D. R. Mahadk for Respondent No.1

CORAM : K. K. TATED, J.

DATE : JANUARY 20, 2016

P.C.:

1. Heard. This Application is made by the claimant for withdrawal of the awarded amount deposited by the Appellant Insurance Co. in the Tribunal.

2. The learned counsel for the claimant submits that in an accident which occurred on 29/05/2009, the Applicant lost her son. He submits that the Applicant's son was serving in Swastik Lloyds Engineering Pvt. Ltd. as Excise Officer and was earning Rs.12,500/- pm. He was 37 years old. On the basis of these facts, the Applicant made an Application u/s. 166 of the Motor Vehicles Act, 1988 for compensation of Rs.4 lacs. He submits that the appeal has been filed by the Insurance Co. only on the ground that the offending vehicle was

not insured with the Insurance Co. He submits that though the Applicant placed on record certificate Exhibit 38 issued by the Dy. R.T.O. to show that the offending vehicle owned by original Respondent No.1 was insured with the Insurance Co. on the date of accident, the Insurance Co. failed and neglected to place on record any concrete evidence in this behalf. He submits in the matter of *National Insurance Co. Ltd. Vs. Bapurao Vishvanath Kendre & Ors. 2013 (T.A.C. 60 (Bom))* this court held that failure of the Insurance Co. to examine and/or place on record any documentary evidence to deny their liability, Insurance Co. cannot blame the Tribunal for its failure to bring on record the relevant documents. He submits that the Applicant is a senior citizen. She does not have any source of income. He submits that the Applicant lost her son who was earning more than Rs.12500/- pm. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the Applicant to withdraw the amount deposited by the Appellant Insurance Co. 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 Insurance Co. has opposed the Civil

Application. He submits that except the certificate Exhibit 38, the Applicant failed to bring on record any other document to show that the offending vehicle was duly insured with the Appellant. Hence, there is no question of allowing the Applicant to withdraw the amount deposited by them in the Tribunal. He submits that if entire amount is recovered/withdrawn by the Respondent-Claimant, nothing will survive in the present proceedings. Hence, Civil Application be dismissed with costs.

4. It is to be noted that in the present proceedings the Insurance Co. failed to bring on record any concrete document and/or evidence except Exhibit B to show that the offending vehicle was not insured with them. The Tribunal has considered Exhibit 38 and held that the Insurance Co. is liable to pay compensation. In the present proceedings, the Applicant lost her son who was earning more than Rs.12500/- pm. Considering the age of the Applicant and the reasons disclosed in the Civil Application, I am satisfied that the Applicant has made out a case for allowing the Civil Application.

5. Hence, following order is passed:

a. The Applicant Vasanti Shankar Palwanker is

entitled to withdraw 50% of awarded amount deposited by the Appellant Insurance Co. in the Tribunal, without furnishing any security, subject to outcome of the First Appeal.

b. The Applicant can withdraw remaining 50% of the awarded amount by furnishing solvent security to the satisfaction of the Tribunal within 12 weeks from today.

c. If the amount is not withdrawn within stipulated time as stated herein above, 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.

d. Civil application stands disposed off accordingly.

JUDGE