

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

CIVIL APPLICATION NO.2654 of 2018

IN

FIRST APPEAL NO.774 OF 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.Rushikesh S. Kale for the applicant

Mr.Sarthak S. Diwan for the respondent

**CORAM : K. K. TATED, J
DATE : MARCH 27, 2019**

P.C.:

. Heard.

2 By this Civil Application applicants original Claimants are seeking permission to withdraw the amount deposited by the appellant Insurance Company before the Tribunal.

3 The learned counsel for the Applicant submits that in an accident dated 17.12.2009

applicant lost son Sharad. He submits that thereafter Applicant filed claim petition under section 166 of the Motor Vehicle Act for compensation of Rs.5 lacs. He submits that the Tribunal after considering the evidence on record held that Applicants are entitled sum of Rs.2,36,000/- by way of compensation along with interest @ 5% p.a.

4 The learned counsel for the Applicant submits that both the Applicants are Senior Citizens. At present, they do not have any source of income. Hence, they require the said amount for day to day needs. He submits that if Civil Application is not allowed, irreparable loss will be caused to them.

5 On the other hand, the learned counsel for the Applicant Insurance Company vehemently opposed the present Civil Application. He submits that if entire amount is withdrawn by the Claimant without furnishing any security then it will be very difficult for them to recover entire amount if they succeed in the present First Appeal.

6 The learned counsel for Insurance Company submits that in First Appeal one of the ground raised by them is about breach of policy. It is the contention of the Insurance Company that on the date of accident the

driver of the offending vehicle was not holding valid licence. Therefore, there is no question of permitting Applicant to withdraw entire amount.

7 Heard.

8 It is to be noted that in the present proceeding Applicant claimed Rs.5 lacs by way of MACP under section 166 of the Motor Vehicles Act. The Tribunal after considering the evidence on record held that Claimants are entitled Rs.2,30,000/- with interest. Both the claimants are Senior Citizen.

9 Considering the submissions made by the learned counsel for the Applicant and the reason disclosed in Civil Application, I am satisfied that the Applicant has made out a case for allowing the Civil Application in following terms:

- a. Both the Applicants are jointly entitled to withdraw 50% of total amount without furnishing any security, but subject to outcome of the First Appeal.
- b. Remaining amount is permitted to be withdrawn by both the Claimants by furnishing solvent security to the satisfaction of the Trial Court on or before 31.07.2019.
- c. Civil Application stands disposed of

accordingly.

d. No order as to costs.

(K.K.TATED, J.)