

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

**CIVIL APPLICATION NO.2698 OF 2019
IN
FIRST APPEAL (ST.) NO. 1795 of 2019**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Ms.Nisha Gandhi I/b M/s/.Res Juris for the applicant

**CORAM : K. K. TATED, J
DATE : AUGUST 14, 2019**

P.C.:

. Heard.

2 By this Civil Application, Applicant is seeking stay of the operation and implementation of the judgment and award dated 2.8.2018 passed by MACT, Mumbai in MACP No.2601 of 2012 holding that Respondent original Claimants are entitled compensation of Rs.3,80,000 within interest @

9% p.a.

3 The learned counsel for the Applicant submits that if entire amount is recovered by the Respondent original Claimants by filing execution Application, then nothing will survive in the Civil Application. She submits that she received instruction from her client that, they are ready and willing to deposit entire awarded amount with interest in the Tribunal within six weeks from today.

4 The learned counsel for the applicant submits that pending the hearing and final disposal of the First Appeal, this Hon'ble court be pleased to stay the operation and implementation of the impugned judgment and award passed by the Tribunal. She submits that in the present proceeding, they are challenging the judgment and award passed by the Tribunal on the ground of breach of terms and conditions of insurance policy.

5 It is to be noted that in the present proceeding, Respondent original Claimants lost their minor child aged 7 years in an accident that occurred on 16.9.2012.

6 Considering these facts and as there is a delay on the part of Applicant to file present First Appeal before this court, I am of the opinion that Respondents original Claimants

can be permitted to withdraw certain amount during the pendency of the present First Appeal. Hence, following order is passed :

A. Civil Application is allowed in terms of prayer clause (b) on condition that Applicant to deposit entire awarded amount in the Tribunal within six weeks from today, failing which Civil Application shall stand dismissed without referring back to the court. Prayer clause (b) reads thus:

“b) Pending hearing and final disposal of the First Appeal the execution, implementation and operation of judgment and award dated 02.08.2018 passed by the Learned Member, Motor Accident Claims Tribunal, Mumbai in MACP No.2601 of 2012 may kindly be stayed.”

B. If amount is deposited by the Applicant in that case, Respondent original Claimant no.1, Aquib Iqbal Nagori is entitled to withdraw 25% of total compensation with accrued interest without furnishing any security but subject to outcome of the First Appeal.

C. Tribunal is directed to invest the remaining amount in fixed deposit of any

nationalized bank initially for a period of one year and same be continued till further orders.

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

E. Civil Application stands disposed of accordingly.

F. No order as to costs.

(K.K.TATED, J.)