

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

**CIVIL APPLICAITON NO.1760/2019
IN
FIRST APPEAL NO.602/2019**

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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Advocate Mr.Vikrant V. Parshurami for appellant.

**CORAM : K. K. TATED, J
DATE : JULY 12, 2019.**

P.C.:

Not on board. At the request of learned advocate for applicant, matter is taken on production board for urgent orders.

2. Learned advocate for applicant submits that, respondent filed execution application for recovery of compensation. He submits that the next date before the trial court is tomorrow i.e. 13.7.2019. Hence, there is urgency.

3. By this civil application applicant/Insurance Company is seeking stay of operation and implementation of impugned judgment and award dated 7.9.2018 passed by MACT, Nashik, in MACP No.93/2016 holding that respondents/claimants are entitled sum of Rs.2,38,000/- by way of compensation with interest @ 7.5% p.a.

4 Learned counsel for applicant submits that the Tribunal erred in coming to conclusion that the Insurance Company is liable to pay the compensation. Issue nos. 1 and 2 reads thus;

1) Do the petitioners prove that on 5.4.2015 at about 9.15 to 9.30 a.m. on Manmad Malegaon road, Varhanepada Shivar when the deceased was going by Maruti Omni MH-20-BY-4175, at that time, Scorpio vehicle bearing No.MH-19-BJ-9444 driven by Namdeo Abhiman Borse in rash and negligent manner gave dash to the Maruti Omi and thereby caused the accident and deceased alongwith other persons were seriously

injured? – Yes.

(2)Do the petitioners prove tthat the deceased died on 7.4.2015 due to the accidental injuries? --Yes.

5. Learned counsel for applicant submits that the trial court erred in coming to conclusion that the deceased died in an accident which occurred on 5.4.2015. He submits that they have good chance of success.

6 Learned counsel for applicant submits that during pendency of present first appeal, this Court, be pleased to stay operation and implementation of impugned judgment and award dated 7.9.2018. He submits that if stay is not granted, it will cause irreparable loss to applicant. He submits that if entire amount is recovered by respondent in execution application, then nothing will survive in the present proceeding.

7. Learned counsel for applicant submits

that he received instructions from his client that they are ready to deposit entire awarded amount with interest in the Tribunal on or before 9.8.2019. Statement is accepted.

8. In the present proceeding, in an accident which occurred on 5.4.2015, claimant no.1 lost his wife. On the date of accident she was 54 years. Hence, the original claimants filed Application u/s 166 of the Motor Vehicle Act for claiming compensation to the tune of Rs.6 lakhs. On the basis of evidence, the Tribunal has awarded sum of Rs.2,38,000/- with interest. Considering the fact that claimant no.1 lost his wife and claimant no.2 his mother and the fact that the accident occurred in the year 2015, I am of the opinion that both the claimants are entitled to withdraw some amount, but subject to outcome of first appeal.

9. Hence, the following order.

A) Civil application is allowed in terms of prayer clause (a) on condition that Insurance Company to deposit entire awarded amount with interest in the Tribunal on or before 9.8.2019 failing which the civil application shall stand dismissed without referring back to court. Prayer clause (a) reads thus;

(a) During the pendency and final disposal of the accompanying First Appeal, the operation and implementation and execution of the order dated 7.9.2018 passed by the learned Judge, Motor Accident Claims Tribunal, Nashik in MACP No.93/2016 be stayed.

B) If entire amount is deposited within stipulated time as sated hereinabove, the respondent/claimant no.1 Baburao Mahadu Pawar and Claimant no.2 Ashabai Baburao Pawar are entitled to withdraw 25% each with accrued interest without furnishing any

security but subject to outcome of first appeal.

C) The Tribunal is directed to invest remaining amount in a Fixed Deposit in any Nationalized bank, initially for a period of one year and thereafter same be continued till further orders.

D) Liberty granted to respondents/claimants if they so desire to prefer appropriate application for withdrawal of amount and that application will be decided on its own merits.

E) Civil application disposed of accordingly.

F) No order as to costs.

(K.K.TATED, J.)