

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

**CIVIL APPLICATION NO.1166 OF 2019
IN
FIRST APPEAL (ST.) NO.6745 OF 2016**

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.S.Butal for the applicant

Ms.Deepika Butala i/b M/s.Res Juris for the respondent

**CORAM : K. K. TATED, J
DATE : APRIL 1,2019**

P.C.:

. Heard.

2 By this Civil Application, applicant is seeking to vacate the stay order dated 12.07.2016 passed by this court and allow them to withdraw amount deposited by the Insurance Company with Commissioner for Workmen's Compensation,Thane.

3 The learned counsel for the applicant

submits that in the present proceeding, Commissioner for Employees Compensation, 4th Labour Court, Thane awarded sum of Rs.8,61,120/- by way of compensation with 12% interest p.a. in Application (WCA) No.146/B-35/2012. He submits that though the stay was granted by this court on 12.06.2016 till today Insurance Company failed and neglected to complete the service on all the respondents. He further submits that Civil Application for condonation of delay bearing No.2074 of 2016 stands dismissed against respondent no.5 vide order dated 19.04.2017. In spite of that Insurance Company failed and neglected to take appropriate steps for restoration of the said application against respondent no.5. He submits that applicant no.1 required amount to maintain herself as well as minor son for her day to day expenses. He submits that in the interest of Justice this Hon'ble Court be pleased to allow the applicant to withdraw amount during the pendency of the present First Appeal.

4 On the other hand, the learned counsel for the Insurance Company vehemently opposed the present Civil Application. He submits that if entire amount is withdrawn by the applicant, then nothing will survive in the present

proceeding. She submits that appellant has good chance of success in the present proceeding.

5 Heard.

6 It is to be noted that as on today First Appeal preferred by the appellant stands dismissed against respondent no.5 owner of the vehicle. Apart from that, though the impugned judgment and award was passed in 2015 till today Applicant no.1 widow and Applicant no.3 and 4 not received single paisa towards compensation.

7 Considering these facts, I am of the opinion that as First Appeal is already dismissed against owner and considering the averments made in application, Applicant is entitled to withdraw some amount during the pendency of the present First Appeal. Hence, following order is passed:

- a. Applicant no.1, Pramiladevi Ram Avtar Singh, Applicant no.3, Jagdish Hareram Singh and Applicant no.4, Marnidevi Jagdish Singh is entitled to withdraw sum of Rs.2,50,000/- each without furnishing any security from the office of the Commissioner for Employees Compensation, 4th Labour Court, Thane.
- b. For remaining amount, Applicant is granted liberty to take out appropriate

proceeding if they want in future. That will be decided on its own merits.

c. Civil application stands disposed off accordingly.

(K.K.TATED, J.)