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

CIVIL APPLICATION NO.1039 OF 2019
IN
FIRST APPEAL NO.286 OF 2019

Oriental Insurance Co. Ltd. .. Applicant

vs.

Rinku Pandurang Mohite and Ors. .. Respondents

Mr.Indrajeet Kulkarni a/w Ms.Ashwini Jadhav a/w Mr.Sameer Mhatre for the applicant

Mr.Sidharth Idnani i/b Mr.A.M.Gokhale for the respondent

CORAM : K. K. TATED, J
DATE : AUGUST 1, 2019

P.C.:

. Heard.

2 By this Civil Application, Applicant Insurance Company is seeking stay of the operation and implementation of the impugned judgment and award dated 15.10.2018 passed by MACT, Mumbai in Claim Application No.329 of 2014 holding that Respondent original Claimant is entitled sum of Rs.16,30,000/- by

way of compensation @ 7.5% p.a.

3 The learned counsel for the Applicant submits that the Tribunal erred in coming to the conclusion that Insurance Company is liable to pay compensation, inspite of the fact that, there was breach of the terms and conditions of Insurance Policy. He submits that they have good chance of success in the present proceeding. He submits that they also placed on record judgment of the Apex Court in the matter of Amrit Paul Singh & Anr. vs. Tata AIR General Insurance Company Limited and Others, (2018) 7 SCC 558. Paragraph 19 and 24 of the authority reads thus:

> *"19. In Lakhmi Chand v. Reliance General Insurance, (2016) 3 SCC 100, the Court was concerned with an order passed by the National Consumer Disputes Redressal Commission (NCDRC) that had declined the relief to the Petitioner therein. The insurer in the said case had taken the plea that the complainant had violated the terms and conditions of the policy, for five passengers were travelling in the goods carrying vehicle at the time of the accident, whereas the permitted seating capacity of the motor vehicle of the Appellant was only 1 + 1. The two-Judge Bench referred to Oriental Insurance Co. Ltd. v. Meena Variyal and Ors., (2007) 5 SCC 428 and expressed the view that in order to avoid liability, the insurer must establish that there was breach on the part of the insured."*
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> *"24. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The Appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out Under Section 66 of the Act, needless to emphasise, are to be pleaded and proved.*

> *The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (supra) and Lakhmi Chand (supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the "Tripitaka", that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (supra) and Ors. cases pertaining to pay and recover principle."*

4 The learned counsel for the Applicant submits that if entire amount is recovered by the respondent original Claimant, then nothing will survive in the present proceedings. He submits that pending the hearing and final disposal of the First Appeal, operation and implementation of impugned judgment and award dated 15.10.2018, may be stayed.

5 On the other hand, the learned counsel for the Respondent original Claimant vehemently opposed the present Civil

Application. He submits that Tribunal after considering the evidence on record, rightly held that Claimants are entitled compensation of Rs.16,30,000/- with interest. He further submits that Tribunal held that Insurance Company have to pay the said compensation to the claimant and then recover from the owner. Therefore, there is no question of granting any stay in favour of Applicant. He further submits that if this court comes to the conclusion that Applicant has made out any case for stay, in that case, Applicant may be directed to deposit entire awarded amount along with interest before the Tribunal within stipulated time.

6 Considering the submissions made by the learned counsel for the Applicant and the averments made in the Application, I am satisfied that the Applicant has made out a case for allowing the present Civil Application, but at the same time, they have to deposit entire awarded amount with interest in the Tribunal on or before 23.08.2019. Hence, following order is passed:

> A. Civil Application is allowed in terms of prayer clause (a) on condition that Applicant to deposit entire awarded amount with interest in the Tribunal on or before 23.08.2019 failing which the Civil Application shall stand dismissed without further reference to the court. Prayer clause (a) reads thus:
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> > *"a) Pending the hearing and final disposal of the appeal this Hon'ble Court by*

an order of stay may kindly stay the operation, implementation and execution of the awarddated 15/10/2018 passed by the Member MACT, Mumbai, in Claim Application No.329/2014."

B. The Tribunal is directed to invest the entire 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.

C. Liberty granted to the Applicant to make appropriate Application for withdrawal of the amount, if they so desire, before this court and that Application be decided on its own merits.

D. Civil application stands disposed off accordingly.

E. No order as to costs.

(K.K.TATED, J.)