

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

CIVIL APPLICATION NO.2605 OF 2019

IN

FIRST APPEAL (ST.) NO.8587 OF 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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Mr.Abhijeet P. Kulkarni for the applicant

**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 10.10.2018 passed by M.A.C.T. Mumbai in Application No.2231 of 2014 holding that Respondents original Claimants are entitled compensation of Rs.10,15,000/- with interest @ 7.5% p.a.

3 The learned counsel for the Applicant submits that at the time of accident, driver of the offending vehicle was not holding valid licence. In spite of that Tribunal held that Insurance Company is liable to pay compensation. In support of this contention, he relies on paragraph 12 of the impugned judgment passed by the Tribunal. He submits that in view of these facts, they have good chance of success in the present matter. He submits that if entire amount is recovered by the Respondent Claimant by filing Execution Application then nothing will survive in the present proceeding.

4 The learned counsel for the applicant submits that he received instruction from his client that they are ready and willing to deposit entire awarded amount with interest in the Tribunal on or before 31.08.2019. Statement is accepted.

5 The learned counsel for the Applicant submits that pending the hearing and final disposal of the present First Appeal, operation and implementation of the impugned judgment and award be stayed. He submits that if stay is not granted, irreparable loss will be caused to them.

6 It is to be noted that in the present

proceeding, in an accident which occurred on 31.10.2014, Claimant no.1 lost her husband. That time, he was 42 years hold and was doing the work of Kadiya-Mistry with Contractor at Dharavi and was earning Rs.15,000/- to Rs.20,000/- per month.

7 On the basis of these facts, original Claimants filed Application under section 166 of the Motor Vehicle Act claiming compensation of Rs.20,00,000/- with interest. The Tribunal after considering evidence on record, held that Respondents original Claimants are entitled sum of Rs.10,50,000/- only. It is to be noted that in the present proceeding, there is a delay on the part of Applicant to file First Appeal before this court. Hence, they preferred Civil Application No.2603 of 2019.

8 Considering these, facts, I am of the opinion that Respondent original Claimants can be permitted to withdraw some amount without furnishing any security subject to outcome of the First Appeal. 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 in the

Tribunal on or before 31.08.2019, failing which Civil Application shall stand dismissed without referring back to the court. Prayer clause (a) reads thus:

"a. That pending hearing and final disposal of the present First Appeal, the effect, operation, implementation and execution of the impugned Judgment and Award dated 10/10/2018 passed by the Motor Accidents Claim Tribunal, Mumbai in M.A.C.P. No.2231 pf 2014 and disbursal of amount there under, be kindly stayed."

B. If amount is deposited within stipulated time as stated hereinabove, Respondent original Claimant no.1, Anandamma Bojappa Ladi is permitted to withdraw sum of Rs.1,00,000/- with accrued interest. Claimant no.2, Allawati Bojappa Ladi, Claimant No.3, Anjaneya Bojappa Ladi and Claimant No.4, Narshing Bojappa Ladi are entitled to withdraw sum of Rs.25,000/- each with accrued interest, without furnishing any security, subject to outcome of the First Appeal.

C. The Tribunal is directed to invest the remaining 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.

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

E. Registry is directed to transfer the amount of Rs.25,000/- along with accrued interest, if any, deposited by the Applicant at the time of filing First Appeal to the MACT, Mumbai in the account of MACP No.2231 of 2014.

F.. Civil Application stands disposed of accordingly.

(K.K.TATED, J.)