

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

**CIVIL APPLICATION NO.3272 OF 2017
IN
FIRST APPEAL (ST.) NO.12408 OF 2017**

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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Ms.Aditi Athawale i/b Ms.Yogita Deshmukh for
the applicant

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

P.C.:

. Heard.

2 The learned counsel for the Applicant submits that by this Civil Application Applicant is seeking stay of the operation and implementation of the impugned judgment and award dated 31.8.2016 passed by MACT, Mumbai in Application No.645 of 2009 holding that Respondent original Claimant is entitled sum of Rs.98,000/- by way of compensation

including no fault liability along with interest @ 7.5% p.a. from the date of Application till realisation.

3 The learned counsel for the Applicant submits that in the present proceedings, Tribunal failed to consider the contributory negligence at the time of deciding the compensation payable to the Respondent original Claimant. He further submits that Tempo vehicle which was involved in the accident was carrying more than 20 to 25 persons. Therefore, there is breach of the terms and conditions of the Insurance Policy. She submits that these facts were not considered by the Tribunal at the time of directing Applicant to pay compensation to the Respondent original Claimant. She submits that they have good chance of success in the present proceedings. She submits that if entire amount is recovered by the Respondent original Claimant by filing execution Application, then nothing will survive in the present proceedings.

4 The learned counsel for the Applicant submits that in the interest of Justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award till the hearing and final disposal of

the First Appeal.

5 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 in the Tribunal on or before 31.8.2019. Statement is accepted.

6 It is to be noted that in the present proceedings, in an accident which occurred on 10.10.2008, Respondent sustained injury. Hence, he filed Application under section 166 of the Motor Vehicles Act claiming compensation of Rs.1.0 lac with interest @ 15% p.a. It is on record that the Respondent original Claimant sustained 37% permanent disability. Considering these facts, I am of the opinion that Respondent original Claimant may be permitted to withdraw 50% 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 Insurance Company to deposit entire awarded amount with interest and cost in the Tribunal on or before 31.8.2019, failing which Civil Application shall stand dismissed without further reference 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 31.08.2016 passed by the Learned Member of Motor Accident Claim Tribunal Mumbai, in the Motor Accident Claim No. 645 of 2009 and disbursal of amount there under be kindly stayed."

B) If amount is deposited within stipulated time as stated hereinabove, Respondent original Claimant is permitted to withdraw 50% amount with accrued interest without furnishing any security subject to outcome of the First Appeal.

C) Tribunal is directed to invest remaining 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 Respondent original Claimant to make appropriate

Application if they so desire, for withdrawal of further amount and that to be decided on its own merits.

E) Civil application stands disposed off accordingly.

F) No order as to costs.

(K.K.TATED, J.)