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

FIRST APPEAL NO.1515 OF 2014

The New India Assurance Co. Ltd. .. Appellant

vs.

Jigar Baban Salve and another .. Respndents

Mr.Devendranath S. Joshi for the appellant

CORAM : K. K. TATED, J
DATE : MARCH 27, 2019

P.C.:

. Heard.

2 Advocate for the appellant submits that by this First Appeal they are challenging the judgment and award dated 18.01.2014 passed by MACT, Mumbai in Application No.170 of 2007 holding that Respondent original Claimant is entitled sum of Rs.50,000/- by way of compensation along with interest @ 7.5% p.a. from the date of application till realization.

3 The learned counsel for the Appellant submits that Tribunal directed Insurance Company to pay compensation and

recover same from the owner.

4 The learned counsel for the appellant submits that office note shows that First Appeal stands dismissed against Respondent no.1 i.e. Claimant. He submits that thereafter Apex Court in the matter of ***Manura Khatun and Others vs. Rajesh Kumar Singh and Others***[1] also held that in the case of gratuitous passenger it is the duty of the Insurance Company to pay first and recover the same from the owner. He relies on paragraph 16 of the said judgment which reads thus:

> *"16. Justice R.M. Lodha (as His Lordship then was and later became CJI) speaking for the Bench held in paras 20 and 26 as under:*
>
> *20. The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the Insurance Company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle (Respondent 2 herein).*
>
> *26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur, MANU/SC/0009/2004MANU/SC/0009/2004 : (2004) 2 SCC 1 and Challa Upendra Rao, MANU/SC/0779/2004MANU/SC/0779/2004 : (2004)*

1 (2017) 4 SCC 796

8 SCC 517 should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 (National Insurance Co. Ltd. v. Saju P. Paul SLP (C) No. 20127 of 2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the Appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made by following the procedure as laid down by this Court in Challa Upendra Rao (supra)."

5 On the basis of these submissions, the learned counsel for

the appellant submits that First Appeal may be disposed of with liberty to Insurance Company to recover the same from the owner.

6 Considering the submissions made by the learned counsel for the Appellant, judgment of apex court in the matter of ***Manura Khatun and Others vs. Rajesh Kumar Singh and Others*** (Supra) and as First Appeal is already dismissed against original Claimant following order is passed:

a First Appeal stands dismissed.

b. Liberty granted to the Insurance Company to recover the said amount from the Respondent no.2 owner of the vehicle.

c. In view thereof, Civil Application does not survive. The same is also dismissed as infructuous.

d. No order as to costs.

(K.K.TATED, J.)