

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

**CIVIL APPLICATION NO.2771 OF 2019
IN
FIRST APPEAL (ST.) NO.14459 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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Ms.Shalini Shankar for the Applicant

Mr.Saumen S. Vidyarthi for the Respondent no.1

**CORAM : K. K. TATED, J
DATE : AUGUST 22 2019**

P.C.:

. Heard.

2 By this Civil Application, Applicant Insurance Company is seeking stay of the operation and implementation of the judgment and award dated 11.10.2018 passed by MACT, Mumbai in MACP No.2181 of 2012 holding that Respondent original Claimants are entitled sum of Rs.3,00,106/- by way of compensation

with interest @ 8% p.a.

3 The learned counsel for the Applicant submits that if entire amount is recovered by the Respondent by filing Execution Application, then nothing will survive in the present proceeding. She 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 First Appeal. She submits that they have good chance of success in the present proceeding. She submits that cheque issued by the owner of the vehicle towards premium was dishonoured. To that effect, learned counsel examined their witness at Exhibit 44. She also placed on record dishonoured cheque and notice issued to the owner of the vehicle. In support of this contention, the learned counsel for the Applicant relies on paragraph 9 of the impugned judgment.

4 The learned counsel for the Applicant submits that she received instruction from her client that they are ready and willing to deposit entire awarded amount with interest in the Tribunal within four weeks.

5 On the other hand, the learned counsel for the Respondent no.1 original Claimant

vehemently opposed the present Civil Application. There is no question of granting any stay in favour of the Applicant. If this court comes to the conclusion that Applicants are entitled that order, in that case, they may be directed to deposit entire awarded amount in the Tribunal with liberty to the Applicant Claimant to prefer appropriate Application for withdrawal of the said amount.

6 Considering the submissions made by the learned counsel for the Applicant, the averments made in Civil Application and as Applicant is ready and willing to deposit entire awarded amount in the Tribunal, I am satisfied that the Applicant has made out a case for allowing the Civil Application. 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 27.09.2019, failing which Civil Application shall stand dismissed without referring back to the court. Prayer clause (a) which reads thus:

“(a) Pending the hearing and final disposal of the present first Appeal, this

Hon'ble Court be please to stay the effect, implementation and or execution of the impugned judgment and order dated 11/10/2018 passed by the Hon'ble Court of Member, in Motor Accident Claims Petittin No.2181 of 2012."

B If amount is deposited within stipulated time as stated hereinabove, Tribunal is directed to invest the said amount in fixed deposit of any nationalized bank initially for a period of one year and same be continued till further orders.

C Liberty granted to the Applicants to prefer an appropriate Application for withdrawal of amount, if they so desire, which will be decided on its own merits.

D Civil Application stands disposed of accordingly.

E No order as to costs.

(K.K.TATED, J.)