

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

**CIVIL APPLICATION NO.2757 OF 2019
IN
FIRST APPEAL (ST.) NO.14552 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.Vikrant V. Parshurami for the Applicant

**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 impugned judgment and award dated 29.1.2019 passed by MACT, Mumbai in MACP No.809 of 2012 holding that Respondent original Claimant is entitled sum of Rs.1,00,000/- 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 Claimant by filing Execution Application, then nothing will survive in the present proceeding. He submits that in the present matter, Tribunal failed to consider the fact that Insurance Company is not liable to pay compensation because the cheque issued by owner of the offending vehicle towards the premium of Insurance Policy was dishonoured. Hence, they have good chance of success in the present matter.

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 in the Tribunal within 3 weeks from today. Statement is accepted.

5 It is to be noted that in an accident which occurred on 11.1.2012 Respondent original Claimant sustained permanent partial disability to the extent of 22% as recorded by the Trial Court in paragraph 14 of the impugned judgment. Because of accident Respondent original Claimant filed Application under section 166 of the Motor Vehicles Act for grant of compensation of Rs.1,00,000/- with interest @ 12%.

6 Considering the injury sustained by the Claimant, I am of the opinion that Claimants

can 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 with interest in the Tribunal on or before 21.9.2019, failing which Civil Application shall stand dismissed without referring back to the court. Prayer clause (a) which reads thus:

“(a) During the pendency and final disposal of the accompanying First Appeal, the operation, implementation and execution of the order dated 29.01.2019 passed by the Learned Judge, Chairman, Motor Accident Claims Tribunal, Mumbai in MAC Petition No.809 of 2012, be stayed.”

B If amount is deposited within stipulated time as stated hereinabove, Respondent original Claimant is permitted to withdraw 30% of total compensation with accrued interest without furnishing any security but subject to outcome of the First Appeal.

C Tribunal is directed to invest the

remaining amount in fixed deposit of any nationalized bank initially for a period of one year and same be continued till further orders.

D Liberty granted to the Applicants 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 bearing MACP No.809 of 2012.

F Civil Application stands disposed of accordingly.

G No order as to costs.

(K.K.TATED, J.)