

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

CIVIL APPLICATION (ST.) NO.16883 OF 2019

IN

FIRST APPEAL (ST.)NO.16880 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.Rohit Jadhav i/b M/s.NDB Law for the
applicant

CORAM : K. K. TATED, J

DATE : JULY 10, 2019

P.C.:

. Not on board. At the request of the learned counsel for the applicant, matter is taken on production board as per praecipe.

2 Heard.

3 By this Civil Application, applicant is seeking stay of the operation and implementation of the impugned judgement and award dated 28.12.2018 passed by MACT, Thane in MACP No.255 of 2012.

4 The learned counsel for the Applicant submits that in the present proceeding,

Tribunal awarded Rs.44,43,960/- by way of compensation in favour of respondent original claimant along with interest @ 8% p.a.

5 The learned counsel for the applicant submits that, they have already deposited entire awarded amount in the Tribunal with interest and cost. He submits that if entire amount is withdrawn by the Respondent Claimant then nothing will survive in the present proceeding. He submits that they have good chance of success in the present matter. He 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.

6 The learned counsel for the applicants submits that in the present matter, accident took place on 11.02.2012 whereas Insurance Policy was issued on 13.02.2012. Therefore, Insurance Company is not liable to pay any compensation to the respondents original claimants. These facts were not considered by the Trial Court. Hence, they have good chance of success in the present matter.

7 It is to be noted that in the present proceeding, in an accident which took place on 11.02.2012, claimant no.1 lost her husband.

At that time, he was earning a sum of Rs.35,400/- per month. On the basis of the said earning, original claimant filed application under section 166 of the Motor Vehicles Act for compensation. It is to be noted that in paragraph 6 of the impugned order, Tribunal specifically recorded that, Insurance Company issued cover note dated 05.02.2012. Paragraph 6 of the impugned order reads thus:

"6. Opponent No.1 then next contents that he being the owner of the tanker had approached the agent of opponent No.2 Insurance Company for issuing the insurance on 06/02/2012. The said agent accordingly issued a cover note after he paid the premium amount of the policy @ Rs.12,000/-. Since there is cover note dated 05/02/2012 the liability, if any, be saddle on opponent No.2 Insurance Company."

8 Considering these facts and as there is a delay on the part of the applicant to file the present First Appeal before this court, I am satisfied that the respondent original claimant can be permitted to withdraw some amount during the pendency of the present First Appeal. Hence, following order:

A) Civil Application is allowed in terms of prayer clause (b) which reads thus:

“a. Pending the hearing and final disposal of this Appeal, this Hon’ble Court be pleased to stay the effect and implementation of the Judgement and Order dated 28th December 2018 passed by the Learned Member of Motor Accident Claims Tribunal, Thane in Claim Application No.255 of 2012.”

B. Respondent original claimant nos.1, 2 and 3 is permitted to withdraw sum of Rs.5,00,000/- each with accrued interest without furnishing any security, subject to outcome of the First Appeal.

C. Tribunal is directed to invest remaining amount in fixed deposit of any nationalised bank initially for a period of one year and same be continued till further orders.

D. Liberty granted to the Claimant to make appropriate Application for withdrawal of further amount, if they so desire and that Application be decided on its own merits.

E. Civil application stands disposed off accordingly.

(K.K.TATED, J.)