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

CIVIL APPLICATION NO.1670 OF 2017
IN
FIRST APPEAL (ST) NO.28114 OF 2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.Kirankumar Phakade i/b Mr.Kanojia for the applicant

Ms.Pooja Yadav i/b D.R.Mahadik for the appellant

CORAM : K. K. TATED, J
DATE : JULY 26, 2019

P.C.:

. Heard.

2 By this Civil Application, Applicant original Claimant is seeking permission to withdraw the amount deposited by the appellant Insurance Company in M.A.C.T.Thane.

3 The learned counsel for the Applicant submits that in an accident which occurred on

1.11.2003, Applicant sustained multiple injuries. He submits that at that time, Applicant was 42 years old and earning Rs.4,500/- per month. Hence, he filed Application under section 166 of the Motor Vehicle Act, claiming compensation of Rs.2.0 lakhs with interest. He further submits that Applicant examined Dr.Khanna, who deposed that applicant sustained 49% partial disability. He submits that Tribunal considering the evidence on record held that Applicant sustained 25% functional disability and awarded compensation of Rs.2,61,000/- with interest @ 7% p.a

4 The learned counsel for the Applicant submits that, though the accident occurred in 2003, till today he has not received a single pie. Hence, he preferred present Civil Application. He submits that in the interest of Justice, this Hon'ble Court be pleased to allow the applicant to withdraw the amount deposited by the Appellant Insurance Company.

5 On the other hand, the learned counsel for the Respondent Insurance Company vehemently opposed the Civil Application. She submits that vehicle involved in the accident was not insured with them.

Therefore, there is no question of allowing the Applicant to withdraw the amount during the pendency of the present First Appeal.

6 Heard both the sides at length.

7 It is to be noted that in the present proceedings, Applicant sustained 25% disability. Apart from that, Trial Court in paragraph 10 specifically held that the vehicle involved in the accident was duly insured with the appellant.

8 Considering these facts, I am of the opinion that Applicant may be permitted to withdraw some amount during the pendency of the present First Appeal without furnishing any security, but subject to outcome of the First Appeal. Hence, following order is passed:

a. Civil Application is partly allowed.

b. Applicant is entitled to withdraw 30% of total compensation with interest without furnishing any security but subject to outcome of the First Appeal.

c. Tribunal is directed to invest the 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. Civil application stands disposed off accordingly.

(K.K.TATED, J.)