

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

**CIVIL APPLICATION NO.2642 OF 2019
IN
FIRST APPEAL (ST) NO.19645 OF 2017**

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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Mrs.S.S.Dwivedi for the applicant

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

P.C.:

. Not on board. At the request of Advocate for the Applicant, matter is taken on production board for urgent orders.

2 Heard.

3 By this Civil Application, Applicant Insurance Company is seeking stay of the operation and implementation of the judgment and award dated 29.11.2018 passed by MACT, Nashik in MACP No.924 of 2017 holding that Respondents original Claimants are entitled

sum of Rs.9,66,000/- by way of compensation with interest @ 7% p.a. from the date of petition till realization of entire amount.

4 The learned counsel for the Applicant submits that in the present proceeding, Tribunal failed to consider the fact that at the time accident, the driver used vehicle for commercial purpose. In support of this contention, she relies on paragraph 21 of the impugned judgment. She submits that they have good chance of success in the present proceeding.

5 The learned counsel for the applicant submits that if entire amount is recovered by the Respondent original Claimant in execution application then nothing will survive in the present proceeding. She submits that in the interest of Justice, pending the hearing and final disposal of the First Appeal, this Hon'ble court be pleased to stay the operation and implementation of the impugned judgment and award passed by the Tribunal. She submits that, she received instruction from the client that they are ready and willing to deposit entire amount in the Tribunal within four weeks from today. Statement is accepted.

6 It is to be noted that in the present proceeding, in an accident which occurred on

8.4.2017 Respondent original Claimant lost son. Hence, they filed claim petition under section 166 of the Motor Vehicle Act.

6 Considering the fact that Respondent original Claimant lost their son and the reasons given by the Tribunal, I am of the opinion that Respondent original Claimants can be permitted to withdraw some amount without furnishing any security. 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 in the Tribunal on or before 23.08.2019, failing which Civil Application shall stand dismissed without referring back to the court. Prayer clause (a) reads thus:

"(a) Pending the hearing and final disposal of this present Appeal, the execution, operation of the judgment and order dated 29.11.2018 passed by the Learned Motor Accident Claims Tribunal, Nashik in M.A.C.P.No.924 of 2017 be stayed in the interest of justice."

B. If amount is deposited within stipulated time as stated hereinabove, Respondent

original Claimant no.1, Raosaheb Jibhau Daitkar and Claimant no.2, Alkabai Raosabeb Daitkar is entitled to withdraw sum of Rs.2,00,000/- each with accrued interest without furnishing any security 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 Applicant to make appropriate application for withdrawal of amount, if they so desire and that be decided on its own merits.

E. Civil Application stands disposed of accordingly.

(K.K.TATED, J.)