

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

**CIVIL APPLICATION NO. 3196 OF 2019
IN
FIRST APPEAL NO. 1347 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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Nikhil Mehta i/b KMC Legal Venture for applicant.

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

P.C.:

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

2. Heard.

3. The Learned Counsel Mr. Mehta submits that, they have already given notice to the other side's Advocate Mr. T. J. Mendon who file caveat on behalf of Respondent No.1. He further submits that, today he intimated him telephonically also. He undertakes to file affidavit of service to that

effect on or before 05/11/2019. The statement is accepted.

4. The Learned Counsel for the Applicant submits that, there is urgency in the present matter because the Execution Court issued the warrant of attachment for recovery of compensation. He submits that the operation of the said warrant is stayed only on the ground that the Applicant preferred the First Appeal before this Court. Hence, there is urgency.

5. The Learned Counsel for the Applicant submits that, by this Civil Application, the Applicant is seeking stay of the operation and implementation of the impugned Judgment and award dated 1st March, 2019 passed by the MACT, Thane in MACP No. 946/2004 holding that the Respondents/Original Claimants are entitled to a sum of Rs. 14,77,243/- by way of compensation with interest @ 7% p.a.

6. The Learned Counsel for the Applicant submits that, if the entire amount is recovered by the Respondents/Original Claimants in Execution Application then nothing will survive in the present First Appeal. He further submits that he received instructions from his client that they are ready and willing to deposit the entire awarded amount with

interest in Tribunal within four weeks from today.
The statement is accepted.

7. It is to be noted that, in the present proceeding in the accident which occurred on 20/11/2003, the Respondent/Original Claimant lost her husband. As per the Claimants' contention, the deceased was earning 1,40,000/- per annum. Hence, she filed the claim application under Section 166 of the Motor Vehicles Act, 1988 claiming a sum of Rs. 45,00,000/- with interest.

8. Considering these fact, I am of the opinion that Claimant No.1 can be permitted to withdraw some amount without furnishing any security but subject to outcome of the First Appeal. Hence, the following order:

a) Civil Application is allowed in terms of prayer clause (a) on condition that Applicant to deposit the entire awarded amount with interest in the Tribunal within four weeks from today, failing which Civil Application shall stand dismissed without further reference to the Court. Prayer clause (a), reads thus:

"a) That this Hon'ble Court be pleased to stay the effect/ Execution, operation and implementation of the Judgment and Award dated 01.03.2019 passed in MACT Application No. 946 of 2004 by Shri. M. M. WALIMOHAMMED-Learned Member,

*Motor Accident Claims Tribunal Thane,
District:THANE.”*

- b) If the amount is deposited within the time, the Respondent/Original Claimant **Neha Nitin Gujare** is permitted to withdraw a sum of Rs. 5,00,000/- with accrued interest without furnishing any security but subject to outcome of the First Appeal.
- c) The Tribunal is directed to invest the remaining amount in fixed deposit of any Nationalized bank, initially for a period of one year and same to be continued till further order.
- d) Liberty is granted to the Respondents-Claimants, if they so desire, to prefer an appropriate application for withdrawal of amount and that to be decided on its own merits.
- e) Civil Application stands disposed of accordingly. No order as to costs.

(K.K.TATED, J.)