

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

**CIVIL APPLICATION NO.2549/2019
IN
FIRST APPEAL (ST)NO.19781/2019**

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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Advocate Mr.SS Diwan for applicant.

**CORAM : K. K. TATED, J
DATE : JULY 18, 2019.**

P.C.:

Heard learned counsel for applicant.

2. By this civil application, the applicant is seeking stay of operation and implementation of judgment and award dated 15.3.2019 passed by passed by MACT, Nashik, in MACP No.585/2012 holding that the respondent/claimant is entitled sum of Rs.12,79,600/- by way of compensation with interest @ 8% p.a.

3. Learned counsel for applicant submits that the respondent/claimant has filed execution application for recovery of entire amount, hence, there is urgency.

4. Learned counsel for applicant submits that at the time of awarding compensation to the tune of Rs.12,79,600/- the Tribunal failed to consider the fact that Respondent failed to place on record any documentary evidence. Even the Tribunal has not considered contributing neglegency and also income of the deceased at the time of deciding the compensation. He submits that they have good chance of success. He submits that if entire amount is recovered by respondent/claimants in execution application then nothing will survive in the present proceeding. Hence, in the interest of justice, this Court be pleased to stay the operation and implementation of the impugned Judgment and Award.

5 Learned advocate for applicant submits that he received instructions from his client that they are ready to deposit entire amount in the Tribunal. Claimant no.1 Jarinabano Mohammad Atique Ansari lost her husband in an accident which occurred on 6.6.2019. He was 23 years at the time of accident and was working as a Driver. His income was

Rs.5000/- per month.

6 Considering these facts, I am of the opinion that Respondent can be permitted to withdraw some amount till the hearing and final disposal of first appeal. In any case, there is delay on the part of applicant to file first appeal before this court. Hence, following order.

A) Civil application allowed in terms of prayer clause (b) on condition that applicant to deposit entire awarded amount alongwith interest in the Tribunal on or before 16.8.2019 failing which civil application shall stand dismissed without referring back to the court. Prayer clause (b) is reproduced as under;

“(b) That pending hearing and final disposal of the present First Appeal, the effect, operation, implementation and execution of the impugned judgment and award dated 15.3.2019 passed by the Motor Accident Claim Tribunal at Nashik, in MACP no.585/2012 and disbursal of amount thereunder, be kindly stayed.”

B) If the amount is deposited within stipulated time as stated hereinabove, Claimant No.1

Jarinabano Mohammad Atique Ansari is entitled to withdraw sum of Rs.2,00,000/- with accrued interest and Claimant No.3 Bismilla Dukhi Ansari and Claimant No.4 Talmunissa Bismilla Ansari and Claimant No.5 Rajiya Bismilla Ansari are entitled to withdraw sum of Rs.50,000/- each with accrued interest without furnishing any security but subject to outcome of first appeal.

C) Tribunal is directed to invest the remaining amount in a Fixed Deposit in any Nationalized bank, initially for a period of one year and thereafter same be continued till further orders.

D) Liberty granted to respondents/claimants if they so desire to prefer appropriate application for withdrawal of further amount and that application will be decided on its own merits.

E) Civil application is disposed of.

(K.K.TATED, J.)