

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

**CIVIL APPLICATION (ST)NO.22008/2019
IN
FIRST APPEAL (ST)NO.22004/2019**

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.Amit Gharte for applicant.

**CORAM : K. K. TATED, J
DATE : AUGUST 16, 2019.**

P.C.:

P.C.

Heard learned counsel for parties.

2. By this civil application, the applicant is seeking stay of operation and implementation of impugned judgment and award dated 26.10.2018 passed by MACT, Palghar in MACP No.126/2017.

3. Learned counsel for applicant submits that respondent has filed execution application. He submits that the execution court issued attachment warrant, hence, there is

urgency.

4. Learned counsel for applicant submits that in the present proceeding, the Tribunal erred in coming to conclusion that the driver of applicant was solely responsible for the accident. He submits that the Tribunal ought to hold that the deceased was also responsible for the accident. He submits that even the Tribunal awarded compensation at higher side. He submits that they have good chance of success.

4. Learned counsel for applicant submits that if entire amount is recovered by the Respondent by execution application, then nothing will survive in the present proceeding. He submits that pending the hearing and final disposal of first appeal, execution of impugned judgment and award dated 5.5.2017 be stayed. He submits that if stay is not granted irreparable loss would be caused to applicant. He submits that they have good chance of success.

5 It is to be noted that, in the present proceeding, in an accident which occurred on 21.7.2017, claimant no. 1 lost her husband Ramu Mahya Bij who was 29 years old. At that time, the deceased was serving in Fabrication department with Midmark (India) Private Ltd. and was getting monthly salary of Rs.22,000/-. Original claimant nos.2 to 6 are minor children and claimant no.7 is father of the deceased. Hence, claimants filed application u/s 166 of the Motor Vehicle Act claiming compensation of Rs.70,00,000/- but they restricted their claim for Rs.1,00,000/- for payment of court fees.

6 Considering the evidence on record, the Tribunal held that respondents are entitled sum of Rs.23,87,440/- by way of compensation.

7 Considering the facts that claimant no.1 has to maintain her minor children and she is a housewife, I am of the opinion that, claimants are entitled to withdraw some amount without furnishing any security, but subject to outcome of first appeal.

a)Civil application is allowed in terms of prayer clause (a)which is reproduced as below on condition that, Applicant to deposit entire amount with interest in the Tribunal on or before 21.9.2019 failing which civil application shall stand dismissed without referring back to the court.

b)If entire amount is deposited, Claimant no.1 Smt.Sani Ramu Bij is entitled to withdraw sum of Rs.4,00,000/- with accrued interest, Claimant no.7 Mahya Savji Bij is entitled to withdraw sum of Rs.2 lakhs with accrued interest without furnishing any security but subject to outcome of first appeal.

c) Tribunal is directed to invest 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.)