

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

**CIVIL APPLICATION NO.2749 OF 2019
IN
FIRST APPEAL (ST.) NO.22266 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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Ms.Shraddha Chheda I/b M/s.Navdeep Vora &
Associates for the Applicant

Mr.T.J.Mendon for the respondent

**CORAM : K. K. TATED, J
DATE : AUGUST 7, 2019**

P.C.:

. Heard.

2 By this Civil Application, Applicant original claimant is seeking stay of the operation and implementation of the impugned judgment and award dated 14.08.2019 passed by MACT, Mumbai in Application No.1315 of 2011 holding that Respondent original Claimant is entitled sum of Rs.17,74,145/- by

way of compensation with interest @ 7.5% p.a.

3 The learned counsel for the Applicant submits that Respondent original Claimant on the date of accident i.e. 31.12.2010 was 16 years old and he was driving the motor cycle. She submits that as per the Motor Vehicles Act, respondent original claimant was not holding valid licence. Therefore, Insurance Company is not liable to pay any compensation. In support of this contention, she relies on paragraph 11 of the impugned judgment. She submits that they have good chance of success in the present matter. She submits that pending the hearing and final disposal of 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 if stay is not granted, irreparable loss will be caused to them.

4 The learned counsel for the Applicant submits that she received instruction from her client that they are ready and willing to deposit entire awarded amount with interest in the Tribunal within four weeks from today. Statement is accepted.

5 On the other hand, the learned counsel for the Respondent vehemently opposed the

present Civil Application. He submits that in the present proceeding, Respondent original Claimant sustained 25% disability. To that effect, Claimant placed on record certificate issued by Doctor. He submits that Tribunal at the time of deciding compensation considered 100% permanent disability. In support of their contention, he relies on paragraph 31 of the impugned judgment. He submits that there is no question of granting any stay in the present proceeding. He submits that if stay is granted in favour of Applicant, in that case, Applicant may be directed to deposit entire awarded amount in the Tribunal and allow the Applicant to withdraw the same.

6 I have heard both the sides at length.

7 It is to be noted that in the present proceeding, Applicant raised objection about breach of the Motor Vehicles Act. It is the case of the Applicant that on the date of accident, Respondent original Claimant was minor and was not holding valid licence. Therefore, they are not liable to pay any compensation. The learned counsel for the Applicant made a statement before this court that, they are ready and willing to deposit entire awarded amount with interest in the Tribunal within four weeks from today.

8 Therefore, I am satisfied that the Applicant has made out a case for allowing Civil Application but at the same time, liberty granted to the Respondent original Claimant, if he so desires to prefer appropriate Application for withdrawal of the amount and that be decided on its own merits. Hence, following order is passed:

a. Civil Application is allowed in terms of prayer clause (a) on the condition that Applicant to deposit entire awarded amount with interest in the Tribunal on or before 7.9.2019, 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 appeal, the impugned Judgment and order dated 14th August, 2018, passed by the Motor Accident Claims Tribunal, at Mumbai in Motor Accident Claim Application No.1315 of 2011 directing the Applicant Undertaking to pay a sum of Rs.17,74,145/- (Rupees Seventeen Lakhs Seventy Four Thousand One Hundred Forty Five Only) with interest @ 7.5% p.a. be stayed.”

- b. Tribunal is directed to invest the said amount in fixed deposit of any nationalized bank initially for a period of one year and same be continued till further orders.
- c. Liberty granted to the Respondents to make appropriate application for withdrawal of amount if he so desires, and to be decided on its own merits.
- d. Civil Application stands disposed of accordingly.

(K.K.TATED, J.)