

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

**CIVIL APPLICATION NO.2957 OF 2019
IN
FIRST APPEAL (ST.)NO.23703 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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Mr.Shrikant M.Dange for the applicant

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

P.C.:

. Not on board. At the request of advocate for the applicant, matter is taken on board for urgent orders.

2 Heard.

3 By this Civil Application, Applicant Insurance Company is seeking stay of the operation and implementation of the impugned judgment and award dated 25.3.2019 passed by MACT, Mumbai in MACP No.1517 of 2012 holding that Respondent original Claimant is

entitled compensation of Rs.8,36,500/- with interest @ 8% p.a.

4 The learned counsel for the Applicant submits that Respondent original Claimant filed execution Application for recovery of entire awarded amount. Hence, there is urgency in the present matter.

5 The learned counsel for the Applicant submits that in the present proceeding, they specifically raised objection of breach of the terms and conditions of the policy. Same was not considered by the Tribunal. Hence, they have good chance of success in the present matter. He further submits that even compensation awarded by the Tribunal is on higher side.

6 The learned counsel for the Applicant submits that 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. He submits that if entire amount is recovered by the Respondent original Claimant in Execution Application, then nothing will survive In the present proceeding.

7 The learned counsel for the Applicant submits that he received instruction to make

statement before this court that Applicants are ready and willing to deposit entire awarded amount with interest in the Tribunal within four weeks from today.

8 It is to be noted that in the present proceeding in an accident which occurred on 1.2.2012, Respondent original Claimant sustained serious degloving injury to his right arm. On that date, he was 42 years. His occupation was Airconditioner and freeze mechanic and monthly income was only Rs.20,000/- per month. He was admitted in KEM Hospital, Mumbai, as an indoor patient from 1.2.12 to 7.5.2012. Because of accident, he sustained 32% permanent disability. To that effect, he examined Dr. Khanna who issued certificate to that effect. Hence, Respondent original Claimant filed Application under section 166 of the Motor Vehicles Act and claimed compensation of Rs.10.0 lacs.

9 Considering the injury sustained by the Respondent and permanent disability to the extent of 32%, I am of the opinion that Respondent can be permitted to withdraw some amount without furnishing any security. In any case, there is a delay on the part of Applicant to file First Appeal before this court. In view of these facts, following order is

passed:

A Civil Application is allowed in terms of prayer clause (a) on condition that Applicant to deposit entire awarded 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. Prayer clause (a) which reads thus:

“(a) Pending the hearing and final disposal of the above appeal, the Award dated 25/3/2019 in MACP/1517 of 2012 in MACT, Mumbai be stayed.”

B If amount is deposited within stipulated time as stated hereinabove, Respondent original Claimant Mohd. Kasim Hasan Ansari is entitled to withdraw 40% amount of total compensation with accrued interest without furnishing any security but subject to outcome of 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 Applicants to prefer

an appropriate Application for withdrawal of further amount, if they so desire, which will be decided on its own merits.

E Civil Application stands disposed of accordingly.

F No order as to costs.

(K.K.TATED, J.)