

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

**CIVIL APPLICATION NO.2773 OF 2017
IN
FIRST APPEAL (ST.) NO.25762 OF 2017**

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.H.G.Misar for the applicant

Ms.Ayodhya Patki i/b M.N.V.Bhutekar for the
respondent no.1

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

P.C.:

. Heard.

2 By this Civil Application, Applicant Insurance Company is seeking stay of the operation the implementation of the judgment and award dated 21.11.2016 passed by MACT, Mumbai in Claim Application No.3280 of 2009 holding that Respondent Claimant is entitled compensation of Rs.9,18,000/- with 9%

interest p.a.

3 The learned counsel for the Applicant submits that in the present proceedings, driver of the offending vehicle was not holding valid licence. Hence, Insurance Company is not liable to pay any compensation. To that effect, he relies on paragraph 9 of the impugned judgment. The learned counsel for the Applicant submits that they already deposited entire awarded amount with interest in the Tribunal. Statement is accepted. He submits that Tribunal has awarded compensation on higher side. Therefore, 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. He submits that if entire amount is withdrawn by the Respondent Claimant then nothing will survive in the present proceedings.

4 On the other hand, the learned counsel for the Respondent original Claimant submits that they may be permitted to withdraw some amount during the pendency of the present First Appeal. He submits that in the present proceedings, in an accident which occurred on 28.10.2009, minor boy sustained several injuries. Hence, Claimant may be permitted to

withdraw amount deposited by Insurance Company.

5 Heard both the sides at length.

6 It is to be noted that in the present proceedings, in an accident which occurred on 28.10.2009 Respondent Claimant who was minor at that time sustained several injuries as under:

- i) Degloving injuries to both leg
- ii) Fracture shaft femur left
- iii) Fracture left tibia
- iv) Fracture right tibia-fibula
- v) Fracture right metatarsal
- vi) Head injury

7 Because of accident, he was admitted to LTMG Hospital, Sion on five occasions as under:

- 1. From 11.02.2010 to 03.03.2010
- 2. From 01.09.2010 to 05.09.2010
- 3. From 20.09.2010 to 02.11.2010
- 4. From 10.11.2010 to 13.11.2010
- 5. From 11.01.2012 to 18.01.2012

8 Considering these facts, I am of the opinion that Claimant can be permitted to

withdraw some amount during the pendency of the present First Appeal. Hence, following order is passed:

a. Civil Application is allowed in terms of prayer clause (a) which reads thus:

"(a) Pending the hearing and final disposal of the aforesaid First Appeal, the execution, operation and implementation of the impugned Judgment and Award dated 21.11.2016 passed by the learned I/C Member, C.R. 7, Motor Accident Claims Tribunal, Mumbai, in M.A.C.P. No.3280/2009 may kindly be stayed."

b. Respondent no.1 natural guardian and next friend of Claimant is permitted to withdraw 25% amount of the total compensation with accrued interest for the benefit of minor Claimant subject to outcome of the First Appeal.

c. The Tribunal is directed to invest the remaining award amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the appeal.

d. Liberty granted to the Respondent original Claimant if he so desires to prefer appropriate Application for withdrawal of further amount and that Application be decided on its own merits.

e. Civil application stands disposed off accordingly.

(K.K.TATED, J.)