

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

FIRST APPEAL NO.920 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. Shailesh S. Pathak for the appellant

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

P.C.:

. Heard.

2 By this First Appeal, appellant is challenging the judgment and award dated 17.3.2015 passed by Employees' State Insurance Court, Mumbai in Application No. (ESI) No. 42 of 2006 declaring that the Notice in form D-18 dated 18.1.2006, and the order dated 15.2.2016 passed under section 85-B of the Employees State Insurance Act, 1948 by the E.S.I. Corporation determining and claiming the damages amounting to Rs.78,528/- are illegal and unsustainable and the Respondent company is not liable to pay

the said damages to the ESI Corporation.

3 The learned counsel for the appellant submits that same issue is involved in another connected First Appeal No.586 of 2013. He submits that said appeal admitted by this court on 8.7.2013 and same is pending for hearing and final disposal on its own merits.

4 The question of law involved in the present First Appeal is as under:

- a. Whether the provisions of section 85-B of the Employees' State Insurance Act, 1948 authorizing Corporation to recover the damages is mandatory or directory?
- b. Whether ESI Court has jurisdiction to waive damages?

5 Considering the submissions made by the learned counsel for the appellant and the impugned judgment and award, I am satisfied that the appellant has made out a case for following order:

- a. ***Admit on above mentioned question of law.***
- b. The Appellant to file private paper book within one year from today, with copy to other side, failing which the First Appeal shall stand

dismissed without further reference to the court.

c. Printing dispensed with.

d. Call R & P.

e. First Appeal be heard along with First Appeal No.586 of 2013.

(K.K.TATED, J.)