

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

CIVIL APPLICATION NO.2048/2019
IN
FIRST APPEAL STAMP NO.35481/2017

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
---	----------------------------

Mr.Mr. D.S.Joshi, advocate for applicant.
None for respondent.

CORAM : K.K.TATED, J.
DATED : JUNE 11, 2019

P.C.

Not on board. On the basis of preceipe filed by learned advocate for applicant, the matter is shown on production board for urgent orders.

2. By this civil application, the applicant is seeking stay of operation and implementation of the impugned judgment and award dated 31.08.2016 passed by the Motor Accident Claims Tribunal Mumbai, in M.A.C.P. No.150/2008.

3. Learned counsel for applicant submits that respondent/claimants filed execution

application to recover the amount. He submits that if the entire amount is recovered by the respondent/original claimants, nothing will survive in the first appeal. He submits that at the time of awarding compensation to the tune of Rs.22,83,930/- the Tribunal failed to consider the fact that, there was breach of terms and conditions of the Insurance Policy. He submits that on the date of accident, the driver was not holding a valid license. Hence, the Insurance Company is not liable to pay the compensation. He submits that he received instructions from his client that they are ready and willing to deposit the entire amount in the Tribunal on or before 20.7.2019. Statement is accepted.

4. In the present proceeding, in an accident which occurred on 20.4.2007, Kishor S. Choudhary died. Hence, legal heirs filed claim petition, claiming compensation of Rs.18 lakhs. Considering the reasons given by the trial court, I am of the opinion that at present, claimant no.1 Mrs.Manisha Kishor Choudhary can withdraw some amount without furnishing security, subject to outcome of first appeal.

5. Considering the submissions made by the learned advocate for the applicant and the averments made in civil application, I am satisfied that applicant has made out a case for following order.

a) Civil application is allowed in terms of prayer clause (a) which is reproduced below, on condition that the Insurance Company to deposit entire awarded amount with interest in the Tribunal on or before 20.7.2019, failing which the civil application shall stand dismissed without referring back to the Court.

a) Pending the hearing and final disposal of the appeal, this Honourable Court, by an order of stay, may kindly stay the operation, implementation and execution of the impugned Judgment and Award dated 31.08.2016 passed by the Motor Accident Claims Tribunal Mumbai, in M.A.C.P. No.150 of 2008.

b) If entire amount is deposited within the stipulated time as stated above, claimant no.1 Mrs.Manisha Kishor Choudhary is entitled to withdraw 20% amount alongwith

accrued interest without furnishing any security, but subject to outcome of first appeal.

c) Tribunal is directed to invest the remaining amount in a Fixed Deposit in a Nationalized Bank, initially for a period of one year and thereafter same be continued till further orders.

d) Liberty granted to respondent/claimants if they so desire to prefer appropriate application for withdrawal of further amount and that will be decided on its own merits.

e) Civil application stands disposed of.

f) No order as to costs.

(K.K.TATED, J.)