

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

FIRST APPEAL NO.1016 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.Amol Gatne for the Appellant

Mr.Pandit Kasar for the Respondent no.2

**CORAM : K. K. TATED, J
DATE : SEPTEMBER 11, 2019**

P.C.:

. Heard.

2 By this First Appeal, appellant original Claimant is challenging the judgment and award 8.3.2019 passed by Commissioner for Employee's Compensation and Judge, 6th Labour Court, Mumbai in Application ECA(419)C-124/2016 dismissing the appellant's Application for compensation under section 4 of the Employees Compensation Act, 1923.

3 Considering the submissions made by

the learned counsel for the appellant and the impugned judgment and award, the question of law involved in the present First Appeal arise as under:

“(A) Whether the statutory defence either us 149 of the Motor Vehicle Act, 1988 and under the Employees Compensation Act, is available to the Insurer of the vehicle that, only because the claimant is charge sheeted for offence u/s 185 of the Motor Vehicle Act. 1988 for drunken driving, in the absence of any medical certificate of the competent authority to that effect and the when the Employee, who suffered permanent disablement and total loss of earning capacity in a motor vehicle accident?

(B) Whether the Insurer of the vehicle can be exonerated on the ground of breach of terms and conditions of Insurance Policy, for drunken driving, without any legal proof of it, without any Medical Certificate to the effect, that, at the time of accident, the employee has consumed more than

30ml of alcohol.

(C) Whether a person can be said to be under the influence of alcohol, when in medical examination it is indicated that, "Best Verbal response- Normal speech"?

a. **Admit.**

b. The Appellant is directed to file paper book within a period of 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. Office to call R & P immediately.

e. learned counsel for the Respondent no.2 waives service.

(K.K.TATED, J.)