

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

CIVIL APPLICATION NO.126 OF 2015
IN
FIRST APPEAL (ST) NO.18594 OF 2013

Sadashiv Mhalappa Vhanmane & Anr.

...Applicants

V/s.

Divisional Controller NWKSRTC

...Respondents

Mr. C. M. Lokesh for the Respondent
Mr. Nagesh Y. Chavan for the Applicants

CORAM: K.K. TATED, J.
DATED : FEBRUARY 12, 2015

PC. :

1. Heard the learned counsel for the parties.
2. This Application is preferred by the claimants for withdrawal of the amount deposited by the Appellant pursuant to the order dated 18/07/2013 passed by this court. He submits that in an accident which occurred on 30/11/2006 the Applicant suffered 33% permanent disability. To that effect, he has placed on record a Doctor's Certificate. He further submits in the entire family, the Applicant is only earning member. He submits that he has to maintain his children and for that purpose he required some amount. In support of this contention, the learned counsel for the Applicant relies on paragraph 5 and 6 of the Civil Application. He submits that if the Civil Application is not allowed irreparable loss and injury will be caused to the Applicant. He

submits that in the interest of justice, this Hon'ble Court be pleased to allow the Applicant to withdraw the amount deposited by the Appellant. He further submits the Applicant is ready and willing to provide solvent security for withdrawal of the part amount.

3. The learned counsel for the Appellant vehemently opposed the Civil Application. He submits that if the entire amount is withdrawn by the claimants without furnishing any security, nothing will survive in the appeal. He submits that at the time of deciding the compensation amount, the Trial Court failed to consider the contributory negligence. He further submits the Trial Court awarded compensation at higher side. Hence, there is no substance in the Civil Application.

4. In the present proceedings, the Applicant suffered 33% permanent disability in an accident. To that effect, a Doctor's certificate is on record. Therefore, the Applicant requires some amount to maintain his family. His children are taking education and for that purpose he requires some amount.

5. In the present proceedings, the Trial Court categorically held that the Applicant spent sum of Rs.95,606/- towards medical expenses.

6. Considering the submissions made by the learned counsel for the Applicant and the impugned judgment and award, I am of the opinion that the Applicant is entitled to withdraw some amount. Hence, the following order :

- a) The Applicant is permitted to withdraw 50% of the amount deposited by the Appellant in the Tribunal without furnishing any security with an undertaking that he will bring back the same, in case this court directs to do so.
- b) The remaining 50% amount be withdrawn by the Applicant by furnishing solvent security to the satisfaction of the Tribunal.
- c) The amount deposited by the Applicant in the Registry at the time of filing of the present appeal be transferred to the Tribunal immediately along with accrued interest, if any.
- d) Civil Application stands disposed off accordingly.

(K.K. TATED, J.)