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

CIVIL APPLICATION NO. 1267 OF 2015
IN
FIRST APPEAL NO. 453 OF 2015

Sham Jagannath Shirke ... Applicant
V/s.
Ifco Tokio General Insurance Co. Ltd. ... Respondent

Mr. S. R. Ronghe for the applicant.
Mr. A. P. Kulkarni for the respondent.

CORAM : K. K. TATED, J.
DATED : 18/04/2015.

P.C.:

. Heard learned Counsel for the parties.

2 This Civil Application is preferred by claimant for withdrawal of amount of Rs.58,42,500/- deposited by insurance company pursuant to the order passed by this Court in the Tribunal.

3 The learned counsel for the applicant submits that as on today the claimant is of 63 years old and does not have any source of income. He further submits that the deceased son was only child of the claimant and the claimant was completely dependent on the income of the son for household expenses, daily livelihood and medical expenses. After the death of sole son, the applicant is facing financial difficulties. Hence, applicant may be allowed to withdraw the amount deposited by the insurance company. In support of his contention, the learned Counsel for the applicant relies on the averments made in paragraph

nos. 4, 5 & 6 of the Civil Application.

4 On the other hand, the learned Counsel for the insurance company vehemently opposed the present Civil Application. He submits that if entire amount is withdrawn by the claimant, then nothing will survives in the First Appeal and it will be very difficult for them to recover the said amount from the claimant. Hence, there is no substance in the present Civil Application and same to be dismissed with costs.

5 I heard both the sides at length. It is to be noted that in the present proceeding, in cause title of the claim petition, the occupation of the claimant was shown as Vastu Visharad in the year 2008 when the claim petition was filed. Today the claimant is Senior Citizen, his age is 63 years. The averments made by the applicant in paragraph nos. 4, 5 and 6 shows that as on today, he does not have any source of incomet. Therefore, he has preferred the present Civil Application for withdrawal of amount.

6 Considering the fact that in the present proceeding, the insurance company challenged the impugned Judgment and Award passed by the Tribunal on the ground that the owner of the offending vehicle was not holding a valid licence and therefore, the insurance company is not liable to pay any compensation, I am of the opinion that the applicant claimant is entitled to withdraw the some amount without furnishing any security.

7 Hence, the following order.

ORDER

a) The Applicant is permitted to withdraw 25% of total compensation deposited by the insurance company without furnishing any security.

b) The Applicant further allowed to withdraw 25% of total compensation deposited by the insurance company by furnishing solvent surety to the satisfaction of the Tribunal.

c) The Tribunal is directed to invest the remaining amount in Fixed deposits of any Nationalised Bank, initially for the period of one year and same to be continued till hearing and final disposal of the First Appeal.

d) Civil Application is disposed of accordingly.

(K.K.TATED, J.)