

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

**CIVIL APPLICATION NO.2344 OF 2014
IN
FIRST APPEAL NO.2400 OF 2007**

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.VA.Shastry for the applicant

None for the respondent

CORAM : K.K.TATED, J.
DATED : 09/04/2015

PC:

- 1 Heard the learned counsel for the applicant.
- 2 The way in which the learned counsel for the applicant has argued the matter itself shows that he is arguing the matter against the interest of the claimant.
- 3 This application is preferred by claimants for withdrawal of the amount deposited by the appellant New India Insurance Co. Ltd in the Tribunal.
- 4 In the present proceeding, initially the applicant claimant filed MACP No.459 of 1997 before the MACT, Satara for claiming compensation of Rs.2,50,000/- under section 166 of the Motor Vehicles Act, 1988. In that Claim Petition, the

Tribunal by judgment and award dated 2.8.2008 held that the claimants are entitled sum of Rs.4,75,000/- with 9% interest by way of compensation. Being aggrieved by the said award, the appellant Insurance Company filed First Appeal No.2400 of 2007 in this court. The said appeal was admitted by this court on 22.10.2007.

5 In the present Civil Application, the applicant in paragraph 4 stated that the applicant have withdrawn Rs.1,50,000/- in addition to Rs.50,000/- as per the permission granted by this court. Thus, remaining amount of Rs.4,46,656/- is lying in the Tribunal. At the time of arguments court pointed out to the applicant's advocate that he has not placed on record whether any such order passed by this court restraining applicants to withdraw the amount. Court also called upon advocate for the applicant to point out order if any passed by this court allowing applicant to withdraw sum of Rs.1,50,000/- in addition to Rs.50,000/- as pleaded by the applicant in paragraph 4 of the Civil Application. At that time, advocate for the applicant submitted that it is not necessary to place all these orders on record. He submits that court should presume about passing of order even if order is not passed restraining applicants to withdraw the amount. Court should consider this application on its own merits. This

court called upon advocate for the applicant either to produce copy of order if any, passed by this court restraining applicants to withdraw the amount. He refused to do so on the ground that it is not necessary to decide the present Civil Application. He submitted that if it is necessary court should presume about the orders passed by this court.

6 This application is for withdrawal of the amount deposited by the appellant Insurance Company. As the applicant's advocate failed to show any order passed by this court restraining them from withdrawing the amount and or any other order passed by this court, this application cannot be entertained. If there is no order restraining them from withdrawing the amount, there is no question of entertaining the present Civil Application. Hence, Civil Application is dismissed.

(K.K.TATED, J.)