

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

**CIVIL APPLICATION NO. 2842 OF 2014
IN
FIRST APPEAL NO. 1003 OF 2014**

Mrs. Kavita Sapan Das	... Applicant
V/s.	
M/s. Apul Textiles Pvt. Ltd.	... Respondent

Mr. R.S. Chahal for the applicant.
Mr. S.C. Naidu i/b S.P. Munghate for the respondent

**CORAM : K. K. TATED, J.
DATED : 05/02/2015.**

PC.:

. Heard learned Counsel for the parties.

2 This application is preferred by the claimant for withdrawal of amount deposited by the respondent company pursuant to the order passed by this Court.

3 The learned Counsel Mr. Chahal for the applicant submits that in accident which occurred on 21.04.2008, the applicant sustained permanent disability. The learned Counsel for the applicant submits that the applicant lost her two fingers and because of that she lost her 100% earning capacity. He submits that applicant placed on record disability certificate issued by Dr. Naresh Khanna, which shows that the applicant suffered 55% partial disability having 100% lost of earning capacity. He submits that these facts are considered by the Commissioner for Workmen's Compensation at the time of deciding

their application. He submits that the Commissioner for Workmen's Compensation considered the documents on record and held that applicant is entitled for compensation of Rs.4,72,944/-.

5 The learned Counsel for the applicant submits that applicant tried to take employment in another establishment, but because of her 100% disability, it is not possible for her to secure the same. He submits that at present the applicant is not doing any job. Therefore, it is very difficult for her to maintain herself.

6 The learned Counsel for the applicant submits that applicant may be allowed to withdraw the entire amount deposited by the respondent company. He further submits that if present Civil Application is not allowed, irreparable loss and injury will be caused to the applicant.

7 On the other hand, the learned Counsel Mr. Naidu for the respondent company vehemently opposed the present Civil Application. They filed their affidavit-in-reply. Same is on record.

8 The learned Counsel for the respondent submits that admittedly in the present proceeding, the applicant lost her two fingers. Considering the Schedule under Section 4 of Workmen's Compensation Act, 1923, applicant suffered only 20% disability. He further submits that even Dr. Naresh Khanna, who issued disability certificate specifically stated in his evidence that it is not possible to say that the applicant lost her 100% earning capacity. He further submits that on the basis of 20% disability, the applicant has already withdrawn sum of

Rs.1,04,330/- from the office of the Commissioner for Workmen's Compensation. He submits that if Court allowed the applicant to withdraw the entire amount, then nothing will survive in the present First Appeal. He submits that in that case, it is very difficult for respondent company to recover the said amount, in case, the Company succeed before this Court.

9 In support of his contention, the learned Counsel for the respondent company relies on the judgment of our High Court in the matter of *B.T. Shipping London Ltd. & Anr. V/s. Arati Narayanan & Ors. reported in 2000 II CLR 836* and particularly on paragraph 9.

10 On the basis of these submissions, the learned Counsel for the respondent submits that as the applicant has already withdrawn sum of Rs.1,04,330/- , nothing survives in the present Civil Application and same be dismissed with costs.

11 I heard both the sides at length. It is to be noted that as on today the the Commissioner for Workmen's Compensation has already decided that applicant suffered 100% disability because of the accident which occurred on 21.04.2008. The Tribunal at the time of deciding this issue in paragraph 8 of the impugned order, relied on the evidence of Dr. Naresh Khanna and disability certificate. Apart from that the applicant in her application specifically stated that thereafter, she tried for employment but failed to succeed in that. She further submits in the application that as on today, she is unemployed. She does not have any source of income. She requires the further amount for her day-to-

day expenses. Considering the facts and circumstances of the present case and Doctor certificate, I am of the opinion that applicant is entitled to withdraw further amount without furnishing any security.

12 Hence, the following order.

- a) Civil Application is partly allowed.
- b) Applicant claimant is entitled to withdraw additional compensation of Rs. 1,75,000/- (without any interest) without furnishing any security, subject to outcome of the First Appeal.
- 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.)