

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.382 OF 2015

IN

FIRST APPEAL NO.228 OF 2015

Amol Trimbak Chavan ... Applicant

Vs.

National Insurance Company Ltd. & Ors. ... Respondents

Ms. Yogita M. Deshmukh for the Applicant.

Ms. Urmila K. Sanil for Appellant.

CORAM : K.K. TATED, J.

DATE : 27TH FEBRUARY 2015

P. C.:

1. Heard learned counsel for the parties.
2. This application is preferred by the Applicant-claimant for withdrawal of the amount deposited by the Appellant-Insurance Company in the Motor Accident Claims Tribunal, pursuant to the order passed by this Court.
3. Learned counsel for the Applicant submits that in the

accident, which had occurred on 1/8/2007, the Applicant sustained several injuries. She submits that the Applicant was admitted in Sanjeevani Hospital, Nashik from 1/8/2007 to 13/9/2007. She further submits that because of the accident, the Applicant sustained 35% permanent disability. To that extent, a disability certificate is placed on record at Ex-39. The statement of Dr. Bhikan Bahadu More, who treated the Applicant in the hospital is also placed on record at Ex-44. Learned counsel for the Applicant submits that the Applicant spent a sum of Rs.1,75,600/- towards medical expenses. She submits that the medical bills are on record at Ex-14. On the date of accident, he was 23 years' old. At that time, he was a student of S.Y.B.A. in Dindori college. She further submits that, at that time, the Applicant was working at the agricultural field and was earning Rs.3,000/- per month. She submits that at present it is not possible for the Applicant to do agricultural work. She submits that the Applicant requires the said amount for his day-to-day maintenance as well as to take further studies. Learned counsel for the Applicant submits that if the Applicant is not permitted to withdraw the said amount, irreparable harm and injury would be caused to him.

4. On the other hand, learned counsel for the Appellant-Insurance Company vehemently opposed the civil application. She submits that the Applicant filed claim petition under Section 166 of the Motor Vehicle Act, 1988 claiming compensation of Rs.3 lakhs.

She submits that the Tribunal failed to consider the contributory negligence. She submits that the Tribunal has awarded compensation on higher side i.e. Rs.2,38,600/-. She further submits that if the entire amount is withdrawn by the Applicant, nothing will survive in the present first appeal. She submits that considering the evidence on record, the Tribunal ought to have held that the Appellant-Insurance Company is not liable to pay any compensation. Hence, there is no merit in the civil application and the same may be rejected.

5. I have heard learned counsel for the parties. In the present proceedings, the accident occurred on 1/8/2007. The Applicant sustained several injuries and, because of that, he was admitted in the hospital for more than 45 days. He spent more than Rs.1,75,000/- towards medical expenses and placed on record the medical bills. It is so stated in paragraph 4 of the civil application. Considering the submissions made by the learned counsel for the Applicant and reasons stated in the civil application, I am satisfied that the Applicant has made a case for withdrawal of some amount. Hence, the following order:

ORDER

(A) Civil Application is partly allowed.

- (B) Applicant is permitted to withdraw Rs.2 lakhs out of the amount deposited by the Appellant-Insurance Company in the Tribunal, without furnishing any security but subject to the outcome of the present first appeal.
- (C) The Tribunal is directed to invest the remaining amount in a fixed deposit in any of the nationalized bank initially for a period of one year and the same shall be renewed till the final disposal the first appeal.
- (D) Civil application is disposed of.

[K.K. TATED, J.]