

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.318 OF 2016
IN
FIRST APPEAL NO.10 OF 2015.

Harpreetsingh Thandi Applicant.

V/s.

Mahendra Laxminaryan Mishra and anr Respondents

Mr. A. M. Gokhale, for the Applicant.

Mr. H. G. Misar, for the Respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 28TH SEPTEMBER, 2016.

P.C. :

1. This application is for seeking withdrawal of 60% amount which was directed to be invested by the Tribunal. It is submitted that the applicant may be permitted to withdraw the said amount unconditionally as no appeal is preferred by the Insurance Company, challenging the said award and also having regard to the fact that it was injury claim. Learned counsel for applicant has placed reliance on several authorities to submit that the Tribunal should not have directed investment of said amount without assigning any reasons for such order.

2. Learned counsel for insurance company submits that the trial Court has directed investment of only 60% of the amount of

compensation; whereas 40% was immediately released to the applicant herein. According to him allowing applicant to withdraw the remaining 60% amount will amount to deciding appeal itself and hence such application should not be allowed.

3. It is pertinent to note that Insurance Company has not preferred any appeal challenging the impugned judgment and award. The appeal is preferred only by the claimant seeking enhancement of the compensation amount. In such circumstances when it is injury claim and claimant applicant needs amount for the medical expenses incurred by him, there is no reason for not allowing the applicant to withdraw the amount. Having regard to the fact that the Insurance company has not challenged the impugned judgment and order by filing appeal, the application is allowed. The applicant is permitted to withdraw the remaining 60% amount of compensation with interest, if any, accrued thereon, on furnishing usual undertaking.

4. Application is disposed of accordingly.

[DR. SHALINI PHANSALKAR-JOSHI, J.]