

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

**CIVIL APPLICATION NO.2978 OF 2015
IN
FIRST APPEAL (ST) NO.3354 OF 2012**

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.V.M.Parkar for the applicant

Mr.Devendranath S. Joshi for the respondent

**CORAM : K.K.TATED, J.
DATED : 29/01/2016**

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by claimant for withdrawal of the amount deposited by the appellant Insurance Company before the Trial Court.
- 3 The learned counsel for the applicant submits that in an accident which occurred on 23.6.2007 the applicant sustained several injuries. At that time, he was 22 years old and was working as a Labourer. At the time of accident, he was getting salary of Rs.4000 per month. He submits that because of accident he

suffered 65% disability. He submits that as on today, it is not possible for him to work as a labourer. Therefore, it is very difficult for him to maintain himself and his family for want of financial assistance. He submits that in the interest of justice, this Honourable court be pleased to allow the applicant to withdraw the amount deposited by the appellant Insurance Company during the pendency of the present First Appeal. He submits that if amount is not allowed to be withdrawn, irreparable loss will be caused to the applicant.

5 On the other hand the learned counsel for the appellant Insurance Company vehemently opposed the present Civil Application. He submits that applicants failed and neglected to place on record documentary evidence to show the relationship of employer and employee between himself and the owner of the vehicle. He further submits that though the applicant placed on record salary certificate showing that he was getting sum of Rs.4000 per month from the owner of the vehicle, the owner of the vehicle failed and neglected to enter into the witness box. Therefore, there is no question of considering the sum of Rs.4,000/- as salary of the applicant. He further submits that they have

good chance of success in the present proceeding. He submits that if entire amount is withdrawn by the claimant then nothing will survive in the present proceeding. Hence, there is no substance in the present Civil Application. Same be dismissed with costs.

6 I have heard the learned counsel for the parties. It is to be noted that in the present proceeding in an accident which occurred on 23.6.2007, applicant sustained 65% disability. On the date of accident he was working as a labourer having 65% disability. It is not possible for him to work as a labourer.

7 Considering the reason given by the applicant in Civil Application I am satisfied that the Applicant is entitled to withdraw some amount at present. For remaining amount he can execute award against the owner of the vehicle according to law. Hence, following order:

a) Applicant Manohar Ratan Sonwane is entitled to withdraw 25% amount deposited by appellant Insurance Company in the Labour Court by giving personal undertaking that as and when this court called upon him to deposit the same, he will do the same.

b) Tribunal is directed to invest remaining

amount in fixed deposit of any nationalised bank initially for a period of one year and same be continued till the hearing and final disposal of the First Appeal.

- c) Liberty granted to the applicant claimant to execute the judgment and decree for remaining amount against the owner of the vehicle.
- d) Civil Application is disposed of accordingly.

(K.K.TATED, J.)