

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

**CIVIL APPLICATION NO.1821 OF 2014
IN
FIRST APPEAL (ST) NO.29133 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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Ms.Priti Rajan Gupta i/b Mr.Deepak
Deshmukh for the applicant

Mr.Rahul Mehta i/b M/s.KMC Legal Venture
for the respondent

CORAM : K.K.TATED, J.
DATED : 06/01/2016

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by claimant for withdrawal of the amount deposited by the Insurance Company in the Tribunal as per the order passed by this court.
- 3 The learned counsel for the applicant submits that in an accident which occurred on 20.4.2002 applicant suffered 15% disability. She further submits that because of that accident, initially applicant was admitted in Sainath Hospital, Shirdi as indoor patient from 20.4.2002 to 5.7.2002. During the hospitalisation he was operated for the

compound fracture tibia fibula and external fixation was done. Thereafter he was admitted in Om Hospital, Nashik as the fracture was not united from 17.2.2003 to 27.2.2003 and again he was operated and internal fixation was done. Again the applicant was admitted in Om Hospital, Nashik from 6.5.2003 to 16.5.2003. She further submitted that because of this accident, applicant was unable to attend his duty where he was working as a Assistant Manager with Ankit Diamond. Hence, his services were terminated by Ankit Diamond. Hence, the applicant may be permitted to withdraw the amount deposited by the Insurance Company. She further submits that this Hon'ble Court be pleased to allow the applicant to withdraw 50% amount without furnishing any security.

4 On the other hand, the learned counsel for the applicant Insurance Company vehemently opposed the present Civil Application. He submits that the Tribunal has awarded compensation on higher side. He submits that applicant claimant has not placed on record any proof and or evidence for future earning and inspite of that Tribunal has awarded sum of Rs.2,09,250/- towards loss of future earning. He submits that if entire amount is withdrawn by the applicant claimant without furnishing any security then it will be difficult for

them if they succeed in the First Appeal. Hence, there is no substance in the present Civil Application and same be dismissed with costs.

5 I have heard both the sides.

6 It is to be noted that in the present proceeding in an accident which occurred on 20.4.2002 applicant claimant sustained 15% disability. He was hospitalised at Indore patient for 4-5 months. Apart from that because of accident he was unable to attend his regular duties with his employer. Hence, his services were terminated.

7 Considering these facts, I am of the opinion that applicant claimant has made out a case for allowing him to withdraw 50% amount deposited by the appellant Insurance Company subject to outcome of the First Appeal. Hence, following order :

- a) Civil Application is partly allowed.
- b) Applicant is permitted to withdraw 50% amount deposited by Insurance Company without furnishing any security subject to outcome of the present First Appeal.
- c) 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.

d) Civil Application is disposed of accordingly.

(K.K.TATED, J.)