

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

CIVIL APPLICATION NO.1500 OF 2016

IN

FIRST APPEAL NO.1579 OF 2011

Mr. Mahesh M. Kakkad

.. Applicant

IN THE MATTER BETWEEN

National Insurance Co. Ltd.

.. Appellant

Versus

Mr. Mahesh M. Kakkad and another

.. Respondents

Mr. R. D. Motkari for the Applicant.

Mr. Rahul Mehta i/by KMC Legal Venture for the original Appellant.

Ms. T. J. Kapre i/by Ms. Pallavi Dabholkar for the Respondent No.2.

CORAM : R.M. SAVANT, J.

DATE : 19th JULY 2016

PC.

1 The above Civil Application has been filed for being permitted to make a further withdrawal from the amount deposited by the Insurance Company i.e. the original Appellant in the MACT, Mumbai. By an order passed on 21.10.2011 the Applicant was permitted to withdraw an amount of Rs.10,64,056/- from the amount deposited. The Applicant has accordingly withdrawn the said amount of Rs.10,64,056/-. The present

application for withdrawal is founded on the fact that the son of the Applicant is pursuing education in Canada and therefore he requires to withdraw a further amount for funding the said education. The issue which arises for consideration in the above First Appeal is the extent of the disability which the Applicant has suffered. The finding of the Trial Court that the Applicant has suffered disability to the extent of 60% is being questioned by the Insurance Company. It is the contention of the Insurance Company that the disability is far less than at the percentage at which it is assessed by the Trial Court. In my view, since an amount of Rs.10,64,056/- has already been permitted to be withdrawn by the Applicant, the interest of justice would be served if the Applicant is permitted to withdraw a further amount of Rs.5,00,000/- from the amount lying in the deposit in the MACT, Mumbai. After the said amount is withdrawn, the balance amount would continue to lie in the fixed deposit and that the directions as contained in the order dated 21.10.2011 would continue to operate. With the aforesaid directions, the Civil Application is disposed of.

[R.M. SAVANT, J]