

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3926 OF 2016
IN
FIRST APPEAL (ST) NO.16711 OF 2015

Smt. Dattatraya Vitthal Jamdade	 Applicant.
V/s.	
The New India Assurance Co. Ltd.	 Respondent

Mr. Sandeep Salunke, for the Applicant.
Mr. Devendranath Joshi, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 7TH SEPTEMBER, 2016.

P.C. :

1. This is an application seeking withdrawal of amount of compensation which is deposited by the Insurance Company with the Tribunal. It is submitted that in the instant accident, the applicant has suffered 65% of disability to his right leg. He has incurred substantial expenses for the medical treatment and hence applicant may be permitted to withdraw the amount of compensation as deposited by the Tribunal.

2. Learned counsel for respondent opposed this application on two grounds. In the first place, it is submitted that the Tribunal's finding as to the negligence is challenged in this appeal. Merely because F.I.R. was filed against the driver of the heavy vehicle, the Tribunal has held

applicant entitled for compensation. Secondly, it is submitted that in paragraph No.18 of its judgment, the Tribunal has held that there is no correlation between applicant's disability and his earning capacity, irrespective of it, Tribunal has awarded compensation to the tune of Rs.11 lacs and therefore, it is urged that the impugned judgment and order of the Tribunal is challenged in this appeal and in such situation, applicant may not be permitted to withdraw substantial amount.

3. Learned counsel for applicant submits that the applicant has also filed cross objection challenging the finding of the Tribunal and hence applicant be permitted to withdraw at least some amount.

4. Having regard to the submissions and the fact that the applicant has incurred substantial expenses for his medical treatment, this application is partly allowed.

5. Applicant is permitted to withdraw sum of Rs.6,00,000/-; out of which Rs.3,00,000/- subject to furnishing usual undertaking, and remaining Rs.3,00,000/- on furnishing security to the satisfaction of the tribunal.

6. Application is accordingly disposed of.

[DR. SHALINI PHANSALKAR-JOSHI, J.]