

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

CIVIL APPLICATION NO.1648 OF 2015

IN

FIRST APPEAL NO.1145 OF 2014

WITH

CIVIL APPLICATION NO.3230 OF 2014

Vaibhav Dilip Lotankar

through his Father & Next Friend

Dilip Pandurang Lotankar

.. Applicant

IN THE MATTER BETWEEN

Bajaj Allianz General Insurance Co. Ltd.

..Appellant

Versus

Vaibhav Dilip Lotankar and another

.. Respondents

ALONGWITH

FIRST APPEAL NO.297 OF 2016

Vaibhav Dilip Lotankar

.. Appellant

Versus

Ashishbhai Vinubhai Kodhari and another

.. Respondents

Mrs. Varsha Chavan for the Applicant/Claimant in Civil Application No.1648 of 2015 & for the Appellant in First Appeal No.297 of 2016.

Mr. M. M. Sathaye for the original Appellant Insurance Company in First Appeal No.1145 of 2014 & for Respondents in First Appeal No.297 of 2016 & for Applicant in Civil Application No.3230 of 2014.

CORAM : R.M. SAVANT, J.

DATE : 29th JUNE 2016

PC.

1. The above Civil Application No.1648 of 2015 has been filed for withdrawal of the amount deposited by the Insurance Company i.e. Bajaj Allianz General Insurance Co. Ltd. The above First Appeals arise out of the Award passed by the MACT, Mumbai. The Applicant/Claimant herein was involved in the said accident and who suffered serious injuries in the said accident and is presently not in a position even to stand without physical support. The MACT had awarded a sum of Rs.39,95,924/- however held that there was contributory negligence of the Applicant/Claimant to the extent of 40% and therefore reduced the amount awarded to Rs.24,00,000/-. The above First Appeals are cross-Appeals filed by the claimant and the Insurance Company. The claimant has filed First Appeal No.297 of 2016 for enhancement of the compensation wherein the deprivation of 40% of the Award amount is put in question. The Insurance Company has filed First Appeal No.1145 of 2015 challenging the said Award. The sum awarded is under various heads. The Learned Counsel appearing on behalf of the Appellant/Insurance Company Mr. M. M. Sathaye would contend that an amount of Rs.7.50 lakhs awarded towards pain and suffering and loss of amenities and another amount of Rs.7.56 lakhs for cost of constant

attendant has been awarded without any basis. This according to the Learned Counsel was as and by way of example.

2. The Learned Counsel appearing for the Applicant Mrs. Varsha Chavan would dispute the said contention and would contend that the Applicant would undoubtedly be entitled for award of the amounts under the said two heads and by the Cross Appeal prays for enhancement to the tune of Rs.60,00,000/-.

3. In my view, assuming that the contention of the Insurance Company is to be accepted the fact would still remain that having regard to the nature of the injuries suffered by the Applicant/Claimant and having regard to the present state of the Applicant/Claimant, he would undoubtedly be entitled to the amounts under the said two heads. As indicated above, the principal amount is Rs.24,00,000/-. In my view, assuming that amount is reduced from the said amount of Rs.24,00,000/-, the Applicant/Claimant would still be entitled to amounts under the two heads awarded by the MACT. In my view, the Applicant can be permitted to withdraw an amount of Rs.15,00,000/- from the said amount of Rs.24,00,000/- deposited along with interest by the Insurance Company. The balance remaining would be invested by the MACT in a fixed deposit of a Nationalized Bank initially for a period of one year. The withdrawal of

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the said amount of Rs.15,00,000/- would be subject to the result of the above First Appeals. It is made clear that the said withdrawal is without security. In so far as the relief of vacating stay is concerned, in view of the above, the said relief cannot be granted. The above Civil Application No.1648 of 2015 is accordingly disposed of.

4. The First Appeal No.1145 of 2014 and First Appeal No.297 of 2016 to be placed for admission after four weeks i.e. on 27.07.2016.

5. Parties to act on a copy of this order duly authenticated by the Court Shirestedar.

[R.M. SAVANT, J]