

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 7324 OF 2017
IN FA/2596/2016**

MANOJ RAJMAL KASLIWAL
VERSUS
BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. THR ITS BRANCH
MANAGER, AURANGABAD AND OTHERS

...
Advocate for Applicant : Mr. S. S. Wagh h/f. Mr. A. S. Deshpande.
Advocate for Respondent No.1 : Mr. S. G. Chapalgaonkar.
...

CORAM : K.K. SONAWANE, J.

DATED : 28TH SEPTEMBER, 2017.

Order :-

Heard Mr. S. S. Wagh, learned counsel for applicant-original claimant and Mr. S. G. Chapalgaonkar, learned counsel for respondent No.1- Bajaj Allianz General Insurance Company Limited. None appears for respondent No.3 i.e. owner of the insured vehicle. Perused the application.

2. This is an application for withdrawal of amount moved by the applicant-original claimant. It has been submitted that respondent No.1- Insurance Company has deposited decretal amount of Rs.3,91,000/- (Rs. Three Lakh Ninety One Thousand Only) in this Court as per the Award passed by the learned Tribunal. Therefore, applicant prayed that he may be permitted to withdraw the amount granted as compensation to victim in vehicular accident.

3. Learned counsel for respondent No.1- Insurance Company raised objection and submits that the vehicle involved in the accident was used as a Taxy for carrying passengers at the relevant time. There was breach of condition of the policy, hence, respondent No.1- Insurance Company is not liable to compensate the loss sustained to the applicant. Moreover, he further submits that the amount awarded is so exorbitant in view of the nature of injuries received to the applicant.

4. I have given anxious consideration to the arguments canvassed on behalf of both sides. Admittedly, the learned Tribunal after appreciating the facts and circumstances and the entire evidence on record awarded compensation for the loss sustained to the applicant following his injuries. Respondent No.1- Insurance Company has already deposited the amount pursuant to the Award passed by the learned Tribunal. In view of the nature of subject matter, I find that the applicant be permitted to withdraw 50 % of the amount deposited in this appeal on behalf of respondent No.1- Insurance Company. It would not cause any prejudice or injustice to the respondents. In contrast, it would sub-serve the purpose for substantial justice. Hence, application deserves to be partly allowed. Accordingly, civil application stands allowed. The applicant is permitted to withdraw the 50 % of the amount deposited by the respondent No.1- Insurance Company in this appeal subject to condition that the applicant shall furnish undertaking to the satisfaction of the Registrar (Judicial) of this Court with effect that in case respondent No.1- Insurance Company succeeded in appeal or any adverse situation arises in future, the applicant shall refund the amount forth-with in this Court. Accordingly, civil application stands disposed of in above terms.

[K. K. SONAWANE]
JUDGE

rrd.