

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

992 CIVIL APPLICATION NO. 9007 OF 2017
IN FA/867/2009

BABAN SADASHIV CHANNE
VERSUS
THE NEW INDIA ASSURANCE CO. LTD.,
ADALAT ROAD, AURANGABAD AND ORS

...

Advocate for Applicant : Mr. Gandhi Amol S.

Advocate for Respondent No.1 : Mr. Ajit Kadethankar.

...

CORAM : **V. K. JADHAV, J.**

DATE : 14th July, 2017.

P.C.:

. Heard the learned counsel for Applicant and the learned counsel
for Respondent / Insurer.

2 The learned counsel for Applicant submits that even though
statutory defence has been raised by the Insurer, the Respondent /
Insurer has failed to substantiate the said defence before the Tribunal.
The learned counsel therefore, seeks modification in the order dated
18th April, 2011 whereby this Court has permitted the Applicant to
withdraw the entire amount on furnishing bank guarantee.

3 The learned counsel for Respondent has strongly resisted the
application on the ground that the Applicant shall furnish the bank
guarantee as directed by this Court.

4 Considering the challenge made to the judgment and award passed by the Tribunal and *prima-facie* it appears that the Respondent / Insurer has failed to substantiate its defence raised before the Tribunal and also considering the fact that the Applicant has incurred huge medical expenses, the Applicant is permitted to withdraw 50% of the amount out of the amount deposited before this Court on furnishing undertaking to the satisfaction of the Registrar (Judicial) of this Court.

5 The order dated 18th April, 2011 is modified accordingly. Civil application is accordingly disposed of.

[V. K. JADHAV, J.]

ndm