

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

926 CIVIL APPLICATION NO. 10662 OF 2017
IN FAST/23410/2016

BALAPPA SANGHAPPA THANKE
VERSUS
THE NEW INDIA ASSURANCE CO. LTD., THR ITS DEPUTY MANAGER,
AURANGABAD AND ORS

...

Advocate for Applicant : Mr. Hanumant P. Jadhav
Adv. for respondent : Mr. S.R .Bodade

CORAM : K.K. SONAWANE, J.

DATE : 21st September, 2017.

PER COURT:

- 1] Leave to correct the title clause of FA No. 10662 of 2017. amendment be carried out forthwith.
- 2] Heard learned counsel for the applicant and learned counsel for the respondent United India Insurance Company.
- 3] Perused the application. The learned Tribunal has awarded compensation to the applicant towards injuries caused in vehicular accident. Accordingly, the Insurance Company has deposited a sum of Rs. 57729/- in this case towards compensation awarded by the learned Tribunal. By this application, the claimant is seeking permission for withdrawal of the amount.
- 4] Learned counsel for the appellant Insurance company submits that the offending vehicle was driven by the driver who was not having valid and genuine driving licence and there was also breach of the policy in regard to offending vehicle. Moreover, the owner also did not pay any premium for covering risk of the passengers. Therefore, the amount may not be allowed

to be withdrawn.

5] Admittedly, the learned Tribunal imposed monetary liability on the owner as well as insurer of the vehicle auto-rickshaw. In view of the doctrine of pay and recover, as laid down under the catena of judgment of the Honourable Apex Court, I do not find any impediment to allow the applicant to withdraw the amount, who is the victim of the vehicular accident. Hence, the application is allowed in terms of prayer clause (B) and the applicant is permitted to withdraw an amount of Rs. 57,729/- deposited by the Insurance company towards compensation as determined by the learned Tribunal, subject to condition that the applicant original claimant shall furnish an undertaking to the satisfaction of the Registrar (Judicial) of this Court to the effect that in case adverse situation arises, if any, after adjudication of appeal in favour of the appellant Insurance Company, the applicant original claimant shall refund the amount received by him forthwith.

Civil application stand allowed and disposed of accordingly. Registry to do the needful for disbursement of the amount in favour of the applicant.

[K.K. SONAWANE]
JUDGE.

grt/-