

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

CIVIL APPLICATION NO. 16092 OF 2016 IN FA/1368/2016

YUSUF CHUNNUMIYAN NADAF

VERSUS

THE MANAGER, BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. AND ANOTHER

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Advocate for Applicant : Ms. Ranjana D. Reddy.

Advocate for Respondent No.1 : Mr. M. A. Deshmukh h/f.

Mr. S. G. Chapalgaonkar.

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CORAM : K.K. SONAWANE, J.

DATED : 12TH OCTOBER, 2017.

Order :-

Heard learned counsel for applicant and learned counsel on behalf of respondent- Insurance Company. This is an application seeking permission to withdraw the amount of Rs.25,000/- (Rs. Twenty Five Thousand Only) deposited towards No Fault Liability (NFL) in the proceedings filed by the applicant under Section 166 of the Motor Vehicles Act.

2. The learned counsel for respondent No.1 Insurance Company raised objection that the vehicle involved in the accident was not insured during the period of accident, and therefore, no question arises for any monetary liability on the respondent- Insurance Company. The owner of the offending vehicle is yet to be served in this matter. Therefore, he seeks accommodation for taking steps to secure the presence of respondent No.2 owner of the offending vehicle in the proceedings.

3. The learned counsel for applicant submits that the matter pertains to the NFL amount of Rs.25,000/- (Rs. Twenty Five Thousand Only) deposited for causing injuries in the vehicular accident to the applicant-claimant. The learned counsel of the applicant drawn the attention of this court towards the findings expressed by the learned Tribunal while deciding the application under Section 140 of the M.V.Act. It has been observed by the learned Tribunal that the so called insurance policy of the vehicle was valid from 10th May 2014 to 9th May 2015 and the alleged accident occurred on 2nd May 2014. It was noticed by the learned Tribunal that there was endorsement on the papers of policy that "it does not cover risk started before 01-02-2014 and after 31-05-2014". Therefore, it can

not be held that the offending vehicle was not insured during the relevant period of mishap.

4. After perusing the findings expressed by the learned Tribunal, I find substance in the contention put-forth on behalf of applicant. Moreover, the application under Section 166 of the M.V.Act is pending before the learned Tribunal. In such circumstances, I do not find any impediment to allow the applicant for withdrawal of the amount of Rs.25,000/- (Rs. Twenty Five Thousand Only) deposited by the respondent No.1- Insurance Company in this Court towards NFL for his injuries. It would not justifiable to keep the claimant stranded for compensation on the issue of period of insurance policy. In case, the appellant succeeded to establish its claim about period of policy, the appellant will recover the compensation amount from owner. In view of nature of objection raised on behalf of applicant, the difficulty of the respondent Insurance Company can be over-come by imposing condition on the applicant while withdrawing the amount. Hence, the application stands allowed. The applicant is hereby permitted to withdraw the amount of No Fault Liability of Rs.25,000/- (Rs. Twenty Five Thousand Only) deposited in this appeal on behalf of respondent- Insurance Company, subject to condition that the applicant shall furnish undertaking to the satisfaction of Registrar (Judicial) of this Court to the effect that, in case any adverse situation arises after adjudication of the appeal on merit in favour of appellant- Insurance Company, the applicant will refund the amount of Rs.25,000/- (Rs. Twenty Five Thousand Only) forthwith as directed by this Court. It is also stipulated that the learned Tribunal shall take into consideration the issue regarding factum of payment of Rs.25,000/- (Rs. Twenty Five Thousand Only) towards NFL amount to the claimant while adjudication of the petition filed under Section 166 of the M.V.Act. The Registry to do the needful for disbursement of amount as directed above in favour of applicant. Accordingly, the civil application stands disposed of.

[K. K. SONAWANE]
JUDGE

rrd.