

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

**CIVIL APPLICATION NO.1191 OF 2017
IN
FIRST APPEAL NO.336 OF 2016**

Shri Harishchandra @ Taya
Vithal Javir

... Applicant

In the matter between :

The New India Assurance Co. Ltd.
Versus

... Appellant

Shri Harishchandra @ Taya
Vithal Javir And Another

... Respondents

.....
Mr. V.M. Parkar for the Applicant.
Mr. Milind V. More for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATE : 24 APRIL 2017

P.C. :

. This First Appeal challenges an order passed by the Motor Accident Claims Tribunal, Mumbai on a claim petition. The Applicant was 22 years old when he met with an accident. The car in which he was travelling turned turtle and as a result, the Applicant suffered serious injuries. The Applicant was hospitalized and even on the date of the claim petition, was undergoing medical treatment. It is seen from the award that out of the compensation of Rs.23,86,200/- awarded by the Tribunal, over Rs.10,00,000/- was towards reimbursement of medical expenses. The First

Appeal has been admitted and the execution of the award has been stayed against the Appellant insurer depositing in Court Rs.10,00,000/-, which was part of the medical expenses purportedly incurred by Respondent No.1 (original Applicant). This civil application seeks withdrawal of that amount. The First Appeal is on the ground that the original Applicant was a gratuitous passenger in a private car, and the risk in respect of such gratuitous passenger, was neither required to be covered under Section 147 nor actually covered under the insurance policy. It is pertinent to note that the insurance policy was not produced before the tribunal. Based on the material before it, the policy was held to be a comprehensive policy. The tribunal also held that the insurer company failed to prove that the injured victim was a gratuitous passenger.

2 On these facts and in the light of this order, it is in the interest of justice that the original Applicant be permitted to withdraw the amount of Rs.10,00,000/-, representing the entire amount deposited by the Appellant insurer towards compensation in this Court, and which represented compensation under the head of medical expenses, together with accrued interest. Accordingly, the original Applicant is permitted to withdraw the sum of Rs.10,00,000/- deposited by the Appellant insurer in this Court in pursuance of the order passed by this Court on 7 March 2016, without any security.

3 Office shall directly to make out a cheque of Rs.10,00,000/- together with accrued interest, if any, in favour of the Applicant Harishchandra @ Taya Vithal Javir. The cheque shall be handed over by the Registry to the Advocate of the Applicant against a receipt issued by the Advocate.

4 The civil application is disposed of accordingly.

(S.C. GUPTE, J.)