

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3879 OF 2016
IN
FIRST APPEAL NO.768 OF 2016**

Chandrakant Maruti Mandhare & Ors	...Applicants/ Ori Respondents
<i>In the matter between</i>	
Bajaj Allianz General Insurance Co Ltd	...Appellant
<i>Versus</i>	
Chandrakant Maruti Mandhare & Ors	...Respondents

Mr Vaibhav R Gaikwad, *for the Applicant No.1/Ori Respondent No.1*
Mr DS Joshi, *for the Appellant.*

CORAM: G.S. PATEL, J
DATED: 27th June 2017

PC:-

1. This is an Application by Respondent No.1, the original Claimant, for withdrawal of the amount deposited. The Appellant has been served.
2. The amount awarded in this injury case was Rs.8,07,097/-. The amount deposited with interest is Rs.13,71,271/-.

3. The defence by the Appellant/Insurer is that there was no valid insurance cover at the time of accident because the cheque issued towards payment of the insurance premium was dishonoured. The dishonour of the cheque is said to have been proved. Whether the notice sent by the Insurance Company to the insured in regard to the dishonour and non-payment was served or not is a matter of debate in the Appeal. According to the Appellant, the notice was duly served, but it remains to be seen whether service of the notice has been established.

4. If this is so, then only manner in which to allow withdrawal is against the claimant furnishing security and an undertaking. The reason is straightforward. If the Appeal succeeds, then the insurer will have no liability at all, there being no valid policy at the relevant time. The claimant is not a position of course to provide a security. The result is unfortunate. What I can however do, and which I will, is to list the matter for priority final disposal, and to direct the Appellant to file a private paper-book.

5. List the First Appeal for hearing and final disposal on 22nd July 2017. Mr Joshi undertakes to file a private paper-book before then and serve a copy on Advocate for Respondents Nos.1 to 3.

6. The Civil Application is disposed of in these terms.

(G. S. PATEL, J.)