

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

**CIVIL APPLICATION NO.4613 OF 2013  
WITH  
CIVIL APPLICATION NO.4614 OF 2013  
IN  
FIRST APPEAL (ST.) NO.28025 OF 2013**

National Insurance Co. Ltd.  
Through its Mumbai Regional  
Office-II ... Applicant  
Versus  
Shamshad Shaukatali Ansari  
And Others ... Respondents

**WITH  
CIVIL APPLICATION NO.3502 OF 2015  
IN  
FIRST APPEAL (ST.) NO.28025 OF 2013**

Shamshad Shaukatali Ansari  
And Others ... Applicants  
Versus  
National Insurance Co. Ltd.  
Through its Mumbai Regional  
Office-II ... Respondent

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Mr. Sanjay Krishnan i/b Harshada Rane for the Applicant/Appellant in Civil Application No.4613 of 2013 and Civil Application No.4614 of 2013.  
Mr. V.M. Parkar for Respondent No.1 in Civil Application No.3502 of 2015.

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**CORAM : S.C.GUPTE, J.**

**DATE : 18 APRIL 2017**

**P.C. :**

. Civil Application No.4613 of 2013 is for a condonation of delay of 95 days in filing the First Appeal. For the reasons stated in the civil application, the civil application is allowed by condoning the delay. Office shall now number the First Appeal and place the same for admission in due course.

2 Civil Application No.4614 of 2013 is for stay of execution of the impugned award passed by the Commissioner of Workmen's Compensation And Judge 11<sup>th</sup> Labour Court, Mumbai. The impugned award of the Commissioner grants a compensation of Rs.2,06,668/- to the original Applicant (Respondent No.1 herein), with interest @ 12% per annum from 13.08.2006 till payment or realization. This compensation was awarded to the Applicant for having suffered an accident while working as driver on a vehicle owned by his employer, namely, Respondent No.2 (original Opponent No.1). It is submitted by learned Counsel for the Appellant that the Appellant has deposited the entire decretal amount together with interest before the Commissioner of Workmen's Compensation And Judge 11<sup>th</sup> Labour Court, Mumbai. It is submitted that, in the premises, pending the hearing and final disposal of the First Appeal, the impugned award be stayed.

3 Civil Application No.3502 of 2016 is taken out by original Applicant seeking permission to withdraw the amount of compensation deposited by the Appellant before the Court.

4 It may be seen from the impugned order of the Commissioner that the Applicant, who was in the employment of Opponent no.1 as a driver, met with an accident whilst on duty and driving vehicle No.MH-04-CP-2611 belonging to Opponent No.1 and sustained injuries. He was admitted to Bhagwati Municipal Hospital and later shifted to Punit Orthopedic Surgical Hospital, Borivli. He sustained a fracture in the right tibial condyle and also other serious injuries. The Applicant examined a medical practitioner, who deposed on the disability of the Applicant. The medical practitioner deposed in his evidence that the Applicant had difficulty in walking without support, and according to his assessment, the disability was to the extent of 55% partial permanent. Based on this evidence, the Commissioner came to a conclusion that with 55% partial permanent disability involving inability to walk without support, it was not possible for the Applicant to drive a vehicle in future and that this amounted to a total loss of earning capacity. The Commissioner, however, did not compensate the Applicant on the basis of 100% loss of earning capacity, purportedly on the ground that the Applicant did not surrender his driving licence to the authority. On this analysis of evidence, the Commissioner granted compensation of Rs.2,06,668/- (with interest) to the Appellant.

5 Having regard to the evidence and circumstances of the case discussed above, the compensation awarded *prima facie* cannot be termed as improper or unreasonable. On these facts, the original Applicant deserved to be allowed to withdraw a substantial part of the compensation deposited by the Appellant insurer before the Court.

6 In the premises, the following order is passed :-

(i) There will be stay of execution of the impugned award of the the Commissioner of Workmen's Compensation And Judge 11<sup>th</sup> Labour Court, Mumbai, until further orders;

(ii) The original Applicant shall be entitled to withdraw a sum of Rs.2,00,000/- from out of the compensation deposited by the Appellant before the Commissioner of Workmen's Compensation And Judge 11<sup>th</sup> Labour Court, Mumbai, without security;

(iii) The balance amount shall be invested by the Commissioner of Workmen's Compensation And Judge 11<sup>th</sup> Labour Court, Mumbai, in fixed deposit/s of a Nationalized Bank, initially for a period of two years and thereafter, renewable from time to time;

(iv) Civil Application Nos.4613 of 2013 and 4614 of 2013 are disposed of in above terms.

7 The First Appeal to come up for admission in due course. The parties are, however, notified that the First Appeal may be disposed of finally at the stage of admission.

8 The Appellant shall file a private paper book containing papers and proceedings before the Commissioner of Workmen's Compensation And Judge 11<sup>th</sup> Labour Court, Mumbai, within a period of 8 weeks from today.

**(S.C. GUPTE, J.)**