IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 3247 OF 2018
IN FAST/35989/2017

BALU @ BALASAHEB SITARAM BERAD
VERSUS
THE BRANCH MANAGER, NEW INDIA ASSURANCE CO. LTD., AHMEDNAGAR AND ANR

...
Mr. Vivek V. Tarde, Advocate for applicant
Mr. M.M. Ambhore, Advocate for respondent no.1
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 06-04-2018

ORDER :

1. This is an application by injured - claimant for withdrawal of compensation amount deposited in this court in the first appeal filed by appellant - insurer against award dated 28-02-2017 in Motor Accident Claims Petition no. 793 of 2011.

2. Learned counsel for applicant submits that he has suffered permanent disability and higher compensation *although* had been considered to be entitled to, the same had been reduced to Rs.4,49,600/-. He submits that the permanent disability has affected his earning capacity and his family is in dire need of compensation amount. Accident had taken place in 2011. Since then, beyond no-fault liability amount, applicant has not received

any compensation. He, therefore, urges for withdrawal of the amount.

3. Learned counsel for appellant - insurer Mr. Ambhore submits that it would emerge on record that there has been stark breach of terms and conditions of the policy and, as such, insurer may not be liable to pay compensation to claimant. He submits that the vehicle had been insured for private user, however, while accident had taken place, it was found that it was used for commercial purpose and, thus, the insurer is not liable to pay. May be, there is an order for pay and recover, yet, with the breach of the terms and conditions, the liability is not incurred by insurance company.

4. *Although*, this is being so submitted on behalf of appellant - insurer, it may not be overlooked in this case that applicant - claimant had suffered permanent disability in the accident which had occurred in 2011 and since then, his earning is claimed to have been affected and, the tribunal it appears, found substance in the claim made by applicant and has granted compensation and has passed the order impugned by the appellant - insurer.

5. In the circumstances, it would be expedient to allow applicant to withdraw a sum of Rs.5,00,000/- with accrued interest thereon, on furnishing of undertaking by applicant that the amount so withdrawn would be paid back / re-deposited by him in this court within a period of three months from date of decision in the appeal, if the same goes against the applicant. Undertaking to be filed within a period of three weeks from today.

6. Rest of the amount, however, be deposited in a nationalized bank in fixed deposit earning interest.

7. Application accordingly is disposed of.

[SUNIL P. DESHMUKH]
JUDGE

arp/