

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

CIVIL APPLICATION NO. 7819 OF 2018
IN FAST/4931/2018

PRAKASH SHRIRAM PAWAR
VERSUS
M.S.R.T.C., THR DIV. CONTROLLER, BEED AND ANR

...
Advocate for Applicant : Mr. Pawan K. Lakhotiya
Advocate for Respondents No.1 and 2 : Mr. S. R. Bagal.

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CORAM : K.K. SONAWANE, J.

DATED : 3rd JULY, 2018.

Order :-

1. Heard learned counsel for the applicant and learned counsel for respondent No. 1 MSRTC. Despite service, no one else turned up on behalf of respondent No. 2- driver of the offending vehicle. Perused the application.

2. The present application is filed for seeking permission to withdraw the compensation amount deposited in this Court towards injury sustained to the applicant-original claimant during the course of vehicular accident.

3. The learned counsel for the appellant raised objection for withdrawal of compensation amount on the ground that issue of involvement of S.T.Bus and driver in the alleged accident is put in controversy in the claim petition as well as in the appeal. He submits that the Tribunal did not appreciate the circumstances on record in its proper perspective and committed error for granting the exorbitant and

excessive compensation amount. The applicant-claimant is not entitled to get compensation from the respondent No.1- MSRTC. Mr. Bagal, learned counsel explained that the time of occurrence of alleged incident was shown on 19-04-2012 at 11.30 p.m. However, the medical bills indicate that on very same day i.e. 19-04-2012 the claimant came to be admitted in the Hospital at Aurangabad within half hour after the alleged incident. He raised objection about the occurrence of mishap itself and involvement of S.T.Bus in the accident. Therefore, learned counsel for respondent No.1 requested not to allow the applicant-claimant for withdrawal of the compensation amount deposited in this Court.

4. Having given anxious consideration to the submissions advanced on behalf of both sides, I find that the applicant received the serious crush injury to his left thigh. There were surgeries on the limbs of the applicant-claimant. The medical expert calculated 40 % permanent physical disability. The claimant was the driver by profession and eking livelihood by driving the auto-rickshaw of one Sangram More. Therefore, no expert's opinion is required to ascertain that the alleged injuries sustained to the claimant in vehicular accident would cause loss to his earning capacity. The learned Tribunal has considered all these aspects and allowed the claim petition partly. Pursuant to the Award passed by the Tribunal, the respondent No.1 MSRTC deposited the decretal amount in this Court.

5. In view of aforesaid attending circumstances, there is no impediment to allow the applicant-original claimant for withdrawal of at least 75 % of the amount deposited in this court in lieu of

compensation. The 25 % of the decretal amount would be kept reserve to protect the interest of the appellant – MSRTC. Definitely, it would sub-serve the purpose in the interest of justice. Hence, application deserves to be allowed to that extent.

6. Accordingly, the application stands allowed partly. The applicant-original claimant Prakash s/o. Shriram Pawar is hereby permitted to withdraw 75 % of the compensation amount deposited on behalf of appellant- MSRTC in this Court as per Award passed by learned Tribunal in Motor Accident Claim Petition No. 14 of 2013, subject to condition that the applicant-claimant shall furnish undertaking that he would refund the amount so withdrawn, in case any adverse situation arises in the appeal. The rest of the balance 25 % of the remaining decretal amount deposited in this Court, be invested in Fixed Deposit Receipts Account in any Nationalized Bank for a period of two years or till decision of the appeal, whichever is earlier with liberty to renew the same in future, if required. The Registry to take requisite steps for disbursement of the amount as mentioned above.

7. The Civil application stands disposed of in above terms. No order as to costs.

[K. K. SONAWANE]
JUDGE

rrd.