

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

921 CIVIL APPLICATION NO. 10086 OF 2018
IN FA/1809/2018

LATABAI LIMBA JADHAV
VERSUS
BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD., AND ORS

...
Advocate for Applicant : Mr. Suhas R. Shirsat
Adv. for Respondent No.1 Mr. S.S. Dargad h/f. Mr. S.G.
Chapalgaonkar.

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CORAM : V.L. ACHLIYA,J.

DATED : 7th August , 2018.

Order :-

1. The applicant has moved this application for withdrawal of amount of Rs. 13,24,213/- deposited by the appellant/Insurance company in terms of the award passed.
2. Heard learned counsel for the applicant and appellant /Insurance company.
3. The learned counsel for the appellant/Insurance company opposed the application with contention that the appellants have good case to succeed in appeal. He submits that the applicants have proved that at the time of accident, driver of the offending vehicle, which was insured with the appellant, was not holding a valid and effective driving licence to drive the offending vehicle. He invited my attention to the observations recorded by the Tribunal in para.14 and 15, wherein, the Tribunal has recorded that the respondent No.2 i.e. appellant/insurance company has proved that the driver of the offending vehicle was not holding a valid and effective driving licence to drive the vehicle in question. In this background, the learned counsel submits that in the event the appeal is allowed, it will be difficult to recover the amount, if the application is permitted to withdraw the amount.

4. On the other hand, learned counsel for the applicant submits that appellants have failed to prove that there was a breach of policy condition. It is pointed out that as per the evidence brought on record, the fact is established that the driver of the offending vehicle was holding an effective and valid licence to drive the light motor vehicle. It is, therefore, contended that no breach of policy is proved by the appellant/Insurance company.

5. Considering the overall facts, submissions advanced and the grounds raised in the appeal, I am of the view that passing of following order would meet the ends of justice :-

[a] Subject to outcome of the appeal, the applicant No.1 is permitted to withdraw an amount of Rs. 4,00,000/- (rupees four lakhs) , on furnishing written undertaking to the satisfaction of Registrar (Judicial) of this court to the effect that in the event, the appeal is allowed or award passed by the Tribunal is modified and she is required to deposit/refund the amount, she shall deposit the same within 12 weeks from the date of such order. On furnishing such undertaking the amount be transferred in her savings bank account, the particulars of which she shall submit to the office.

[b] The balance amount be invested in Fixed Deposit in State Bank of India, High Court Branch, initially for a period of 3 years, to be renewed if required. The interest accrued on the amount invested in fixed deposit shall be paid to the applicant, after every 3 months, by transferring the amount directly in her savings bank account until further orders.

[c] The payment of interest would be subject to final outcome of appeal. In the event award is modified or set aside, the applicant shall repay the same.

[d] Civil application stands disposed of in above terms.

**[V.L. ACHLIYA]
JUDGE**