

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

910 CIVIL APPLICATION NO. 13273 OF 2017
IN FAST/4464/2017

KAMALBAI GOVIND RATHOD
VERSUS
SANTOSH GANPATI BOXIKET AND ORS

...
Advocate for Applicant : Mr. Govind G. Suryawanshi
Advocate for Respondents No. 3 to 5 : Mr. Mohit Deshmukh h/f
Mr. S.G. Chapalgaonkar
...

CORAM : K.K. SONAWANE, J.

DATED : 19th JUNE, 2018.

Order :-

1. Heard learned counsel for the applicant and respondent-Insurance Company.
2. By the present application, the applicant is seeking withdrawal of the compensation of amount deposited in this Court pursuant to award passed by the learned Tribunal.
3. Mr. Deshmukh, learned counsel for respondents No. 3 to 5 raised objection and submits that applicant-original claimant was gratuitous passenger travelling in the auto rickshaw, which was goods carrier, therefore, the Insurance Company is not responsible to indemnify loss caused to the owner of the vehicle. He submits that there is every hope of success in the appeal, therefore, the amount cannot be allowed to be withdrawn by the applicant.
4. Taking into consideration the arguments advanced on behalf of

the learned counsel for respondent-Insurance Company, it is evident that the applicant-claimant sustained injuries during the course of accident of auto rickshaw. The learned Tribunal has appreciated the entire facts and circumstances and granted the compensation amount in favour of the applicant-claimant. There is no doubt that the applicant is entitled to get compensation for the injuries caused to her in vehicular accident. In such circumstances, it would be justifiable to allow the applicant-claimant to withdraw atleast 50% of the amount deposited in this Court on certain terms and conditions. In such circumstances, there is no impediment to allow the application partly.

5. Accordingly, the civil application is partly allowed. The applicant - Kamalbai Govind Rathod is hereby allowed to withdraw 50% of the amount deposited in this Court on behalf of appellant-Insurance Company towards compensation, subject to condition that the applicant-original claimant shall furnish undertaking to the effect that applicant would refund the amount so withdrawn in case any contingency arises in the appeal. Rest of the balance amount be invested in Fixed Deposit Receipts account in any Nationalized Bank for a period of two years or till final disposal of the appeal, whichever is earlier, with liberty to renew the same if required. Registry to take requisite steps for disbursement of the amount in favour of the applicant.

6. Accordingly, application stands allowed in above terms.

[K. K. SONAWANE]
JUDGE

MTK.