

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

**CIVIL APPLICATION NO. 2567 OF 2018
IN
FIRST APPEAL STAMP NO. 2047 OF 2018**

Sarjerao Krishnat Mane	... Applicant
<i>In the matter between</i>	
National Insurance Company Limited	... Appellant
Versus	
Sarjerao Krishnat Mane and another	... Respondents

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Mr. Sudhakar G. Thorat for Applican-original claimant.
Mr. P. A. Narayanan for respondent-insurance company.

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CORAM : K. K. SONAWANE, J.

DATE : 13th AUGUST, 2018.

P. C.:

1. Heard learned Counsel for the applicant-original claimant and learned Counsel for respondent-insurance company.

2. The claimant moved the present application seeking permission to withdraw compensation amount of Rs. 2,45,367/- deposited before the M.A.C.T. Kolhapur in Claim Petition No. 387 of 2011.

3. Learned Counsel for respondent-insurance company raised objection and submits that the insurance company has already

preferred appeal agitating validity and propriety of the impugned award passed by the M.A.C.T. for compensation in favour of applicant-original claimant. According to the learned Counsel the offending vehicle involved in accident was not having valid permit. Moreover, the driver was not possessing valid license. He has also raised objection that the claimant did not implead another vehicle and its insurance company in the present proceeding who are also liable to indemnify the loss caused due to negligence on the part of its driver. Therefore, learned Counsel requested to allow the applicant to withdraw the amount.

4. In view of nature of the subject matter and the grounds of appeal raised on behalf of respondent-insurance company I do not find any impediment to allow the applicant to withdraw some part of the compensation amount in this case, it would be unjust and improper to keep the applicant awaiting decision of the present appeal on merit. The applicant-claimant sustained physical disability during the course of vehicular accident. The Tribunal appreciated the entire factual aspect and awarded compensation amount. In such circumstances, application deserves to be allowed partly.

5. Accordingly, civil application stands allowed partly. The applicant-original claimant is hereby permitted to withdraw lumpsum amount of Rs.1,75,000/- from the total sum or Rs.2,45,367/- deposited before the M.A.C.T. Kolhapur in Claim Petition No. 387 of 2011. The applicant shall furnish undertaking prior to withdrawal of amount with effect that he would refund the amount so withdrawn forthwith in case any contingency arises in the appeal. Rest of the balance decretal amount remained deposited before the M.A.C.T. be invested in any nationalised bank in FDR account for a period of two years or till decision of the present appeal on merit, whichever is earlier with liberty to renew the FDR in future, if required.

6. The Registry of M.A.C.T. Kolhapur to take requisite steps for disbursement of amount of compensation in favour of the applicant as directed above and forward compliance report.

7. With aforesaid observations, civil application stands disposed of.

(K. K. SONAWANE, J.)