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

**FIRST APPEAL No.736 OF 2017
WITH
CIVIL APPLICATION No. 2234 OF 2017
WITH
CIVIL APPLICATION No. 1353 OF 2018**

Iffco Tokio General Insurance Co. Ltd. ... Appellant
Vs.
Dr. Kasam Yusuf Dalwai & Anr. ... Respondent

Ms. Varsha Chavan for the Appellant, and for the Applicant in CAF. 2234/2017, and for the Respondent in CAF. 1353/2018.

Ms. Sangeeta S. Salvi for the Respondent No. 1 in the appeal for the applicant in CAF. 2234/2017, and for the Applicant in CAF 1353/2018.

CORAM : V. M. DESHPANDE, J.

DATE : JUNE 20, 2018

PC :-

First Appeal No.736 of 2017

1. **Admit.** Learned counsel waives service for the Respondent No.1. Call for Record and Proceedings.

Civil Application No. 1353/2018

2. This is application for withdrawal of the amount deposited by Insurance Company. Heard learned counsel for the parties. The appeal is filed against the judgment and order in Motor

Accident Claim Petition No.248 of 2014 dated 1/9/2016. The petition filed on behalf of the claimant/applicant for compensation under section 166 was allowed and the opponents therein including the insurance company was directed to pay Rs.6,73,980/- including no fault liability compensation with interest @ 8% p.a. The applicant has suffered injury in the accident. According to the learned counsel, applicant/claimant has suffered 45% partial permanent disability.

3. It is not in dispute that applicant has suffered injury in the accident. In that view of the matter, in the interest of justice this application is required to be allowed in part. According, I pass following order:

ORDER

- i) Application is allowed in part;
- ii) Applicant/claimant is entitled to withdraw 50% of the amount deposited by the insurance company on he giving an undertaking at the time of withdrawal that in case judgment goes against him he shall refund the amount with interest which will be calculated at that time;
- iii) Applicant will be at liberty to file appropriate application, if occasion arise by pointing out the necessity for withdrawal of the further amount;
- iv) The Motor Accident Claims Tribunal, Thane shall invest the remaining amount with any nationalized bank in Fixed Deposit Receipt initially for a period of 3 years and thereafter it shall be renewed year after year to save the loss of interest;

- v) The statutory amount of Rs.25,000/- which is deposited at the time of filing of the appeal shall also be invested by the Registry in the Fixed Deposit Receipt with any Nationalized Bank to save loss of interest;
- vi) Application is disposed of with no costs.

Civil Application No.2234 of 2017

4. This application is for stay. Heard learned counsel for the appellant and claimant. Today appeal is admitted by this Court after hearing the parties and also application for withdrawal of the amount filed by claimant is allowed in part. The appellants have already deposited entire amount. This Court on 9/8/2017 has granted ad-interim stay in favour of the Appellant.

5. In that view of the matter after hearing the parties to the application, the order dated 9/8/2017 is hereby made absolute. Application is allowed and disposed of.

Sd/-
[V. M. DESHPANDE, J.]