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

**CIVIL APPLICATION NO. 2144 OF 2016
IN
FIRST APPEAL NO. 547 OF 2017**

Ramji P. Gupta

... Applicant

Versus

The Oriental Insurance Co. Ltd.

... Respondent

Mr. Niketan Nakhwa, for the Applicant.

Mr. Sandip Jinsiwale, for the Respondent.

CORAM : K. K. SONAWANE, J.

DATED : 6th AUGUST, 2018.

P.C.:-

1. Heard the learned Counsel for the Applicant – original claimant and the learned Counsel for the Respondent – Insurance company. The Applicant has preferred present application seeking permission to withdraw the amount of compensation deposited before the learned Trial Court for the injuries caused to him in a vehicular accident. The learned Counsel for the Respondent – insurance company raised the objection and submits that Appeal has been filed against the impugned judgment and award of the Trial Court and the appellant - insurance company put in question the issue of employer - employee relations in the Appeal. The appellant –

insurance company is not liable to indemnify the loss caused to the vehicle owner in an accident. He submits that there is no urgency into the matter. The alleged accident occurred in the year 2002, but the applicant - injured approached to the learned Commissioner under Employees Compensation in the year 2013. He, therefore, requested to get adjudicate the appeal finally on merit instead of allowing the Applicant for withdrawal of the amount pending appeal.

2. In view of reasons mentioned in the application and nature of the subject matter, I am not in agreement with the learned Counsel for the Respondent – insurance company to preclude the applicant – claimant for deriving the benefit of the impugned award passed by the learned Trial Court for the injury caused to him in the year 2002. The applicant – claimant has already suffered permanent physical disability due to vehicular accident. The learned Trial Court has appreciated the entire facts and circumstances on record and awarded compensation by impugned judgment and award in favour of applicant. In such circumstances, there is no impleadment to allow the claimant for withdrawal of some part of the compensation amount deposited before the learned Trial Court. Hence, the applicant deserves to be

allowed.

3. Accordingly the application stands allowed partly. The applicant is hereby permitted to withdraw lumpsum amount of Rs.1,50,000/- from the amount of compensation deposited before the learned Commissioner under Employee's Compensation, Mumbai in W.C. No.773/C-199/2013, subject to condition that the applicant – claimant shall furnish the undertaking that he would refund the amount of compensation so withdrawn forthwith in case any contingency arises in Appeal. Rest of the balance compensation deposited before the Commissioner under Employee's Compensation, 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.

4. The Registry of the Court of the learned Commissioner under Employee's Compensation shall take requisite steps to disburse the amount in favour of Claimant as directed above and shall forward the report to this Court.

5. Accordingly, Application stands disposed of in above terms. No order as to costs.

[K. K. SONAWANE, J.]

Santosh
Subhash
Kulkarni

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2018.08.08
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