

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

**CIVIL APPLICATION NO. 1103 OF 2015
IN
FIRST APPEAL NO. 850 OF 2014**

Kiran Pandurang Mohite ... Applicant

IN THE MATTER OF
The New India Assurance Co. Ltd. ... Appellant

V/s.
Kiran Pandurang Mohite & Anr. ... Respondents

Ms. Kamal M. Sawant i/b Mr. Avinash Gokhale for the Applicant in C.A.F./1103/2015 and for the Respondent in F.A.850/2014.

Ms. Sushma P. Gor h/f Ms. Kalpana R. Trivedi for the Appellant in FA/850/2014.

CORAM : K.K. SONAWANE, J.

DATE : 1st AUGUST, 2018.

P.C. :

1 Heard learned Counsel for the applicant-original claimant and the learned Counsel for the appellant-Assurance Company. Perused the application. The applicant-original claimant filed the present application for seeking permission to withdraw the compensation amount of Rs.4,38,580/- deposited before the M.A.C.T. Mumbai in Claim Application No.3343 of 2005. In view of reasons mentioned in the application and the grounds of objection raised by Assurance Company, there is no impediment to allow the

applicant for withdrawal of atleast lump sum of Rs.2.5 lakhs from the total sum of compensation deposited before the Trial Court. The claim petition pertains to the injury sustained to the applicant in vehicular accident resulted into permanent disability. Learned Counsel for the appellant-Assurance company raised an objection in regard to the nature of the physical disability and its percentage. In such circumstances, it would justifiable to allow the applicant to withdraw the amount of Rs.2.5 lakhs being a part payment of the compensation amount.

2 Hence the application stands partly allowed. The applicant is hereby permitted to withdraw the lump sum amount of Rs.2.5 lakhs from the total compensation amount deposited before the M.A.C.T. Mumbai by the appellant-Assurance Company in Claim Application No.3343 of 2005 subject to condition that the applicant shall furnish the undertaking to refund the amount so withdrawn forthwith in case any contingency arises in the appeal. Rest of the balance compensation amount deposited before the M.A.C.T. Mumbai be invested in F.D.R. account in any nationalized bank for a period of two years or till decision of the present appeal on merit, whichever is earlier, with liberty to renew the F.D.R. in future if required.

3 The concerned Registrar of the M.A.C.T. Mumbai shall take requisite steps for disbursement of amount in favour of applicant after accepting the undertaking and forward the report of the same to this Court.

4 Accordingly, the Application stands disposed of in above terms.

Waishali
Sushil
Waghmare

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by Waishali
Sushil
Waghmare
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2018.08.08
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(K.K. SONAWANE, J.)