

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

**CIVIL APPLICATION NO. 1645 OF 2018
IN
FIRST APPEAL STAMP NO. 15436 OF 2017**

Sahebrao Babulal Kapure ... Applicant

In the matter of

The New India Assurance Co. Ltd. ... Appellant

Versus

Sahebrao Babulal Kapure and another ... Respondents

.....

Mr. T.J. Mendon for the Applicant.

Mr. Himanshu Takke i/b Mr. Milind V. More for Respondent.

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CORAM : K. K. SONAWANE, J.

DATE : 27th JULY, 2018.

P. C.:

1. Heard learned Counsel for Applicant and learned Counsel for respondent-insurance company. Perused the application.

2. The applicant has filed the present application seeking permission to withdraw the decretal amount of Rs. 12,66,470/-, deposited before the learned Member, M.A.C.T. Kalyan in M.A.C.P. No. 1235 of 2001.

3. Learned Counsel for appellant-insurance company raised objection and submits that the applicant-claimant claimed the compensation for the injuries caused to him. In view of nature of injuries the amount awarded by the tribunal appears to be exorbitant and excessive one. There is no documentary evidence produced on record in regard to serious disability on the part of the applicant. The Tribunal also erroneously calculated the compensation amount towards the future prospect of the applicant-claimant.

4. Learned Counsel for the insurance company drawn attention of this Court towards the circumstances that the applicant was government servant and there was no loss of earning to him as alleged. In such circumstances, he is not entitled for any compensation for physical injury and other heads except his compensation for physical injury in lieu of medical expenses.

5. On consideration of factual aspects and the relevant documents produced on record, I find force in the contentions put-forth on behalf of the appellant-insurance company. But, it

cannot be denied that there was physical injury to the applicant-claimant. In such circumstances, some part of compensation amount is required to be allowed to withdraw on behalf of applicant-claimant. In view of attending circumstances on record, I find that a lumpsum amount of Rs.4,00,000/- be allowed to be withdrawn by the applicant-claimant. Hence, civil application deserves to be partly allowed.

6. Accordingly, civil application stands partly allowed. The applicant-claimant is hereby permitted to withdraw a lumpsum amount of Rs.4,00,000/- from the total decretal amount deposited in this case before the M.A.C.T. Kalyan, in M.A.C.P. No. 1235 of 2001, subject to condition that the applicant-claimant shall furnish undertaking that he would refund the amount so withdrawn forthwith, in case any contingency arises in the appeal. Rest of the balance decretal amount 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.

7. The Registrar of the M.A.C.T. Kalyan, shall do the needful to facilitate for disbursement of amount in favour of the applicant-claimant as mentioned above.

8. Accordingly, civil application stands disposed of in above terms.

(K. K. SONAWANE, J.)

Shridhar
Marutirao
Sutar

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Shridhar Marutirao
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Date: 2018.08.02
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