

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

**CIVIL APPLICATION NO. 2199 OF 2017
IN
FIRST APPEAL NO. 1247 OF 2016**

Kanhayyalal Sunderlal Valani	... Applicant
IN THE MATTER OF National Insurance Co. Ltd.	... Appellant
V/s. Kanhayyalal Sunderlal Valani & Anr.	... Respondents

Mr. Amol Gatne for the Appellant.
Ms. Varsha Chavan for Respondent No.1.

CORAM : K.K. SONAWANE, J.

DATE : 25th JULY, 2018.

P.C. :

1 Heard learned Counsel for the Applicant-Original Claimant and learned Counsel for Respondent-Insurance Company. No one else appeared on behalf of Respondent No.2-owner of the offending vehicle. Perused the Application. The Applicant-Original Claimant moved the present Application seeking permission to withdraw the compensation amount deposited in the M.A.C.T. Mumbai in Petition No.1769 of 2011. The Respondent-Insurance Company has deposited the entire decretal amount pursuant to the

impugned judgment and award passed by the Tribunal. Applicant-claimant seeks leave to withdraw the decretal amount. Learned Counsel for the Respondent-Insurance Company raised an objection and submits that the Appeal has already been listed for final hearing on merit. The Insurance Company has been held liable to make the payment of compensation jointly and severally for the 90% permanent disability caused to the applicant-claimant during the course of vehicular accident. In view of grounds raised in the Appeal, there is no impediment to allow the applicant for withdrawal of atleast Rs.3,75,000/- from the amount deposited on behalf of Appellant-Insurance Company before the learned Tribunal, Mumbai in the present proceeding. Definitely it would sub-serve the purpose to protect the interest of the Appellant-Insurance Company. Hence, Application deserves to be allowed to that effect.

2 Accordingly, the Application stands allowed partly. The Applicant-original Claimant is hereby permitted to withdraw the total lump sum amount of Rs.3,75,000/- from the amount of compensation deposited in the learned Tribunal on behalf of Appellant-Insurance Company in the proceeding of Petition No.1769 of 2011 decided on 15.10.2015. The Applicant-original Claimant is hereby permitted to withdraw the amount subject to condition that Applicant shall furnish the undertaking that the

amount so withdrawn be refunded by him forthwith in case of any contingency arises in the proceeding of appeal. Rest of the balance decretal amount deposited in 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 Appeal whichever is earlier with liberty to renew the F.D.R. in future if required. Accordingly, Civil Application stands disposed of in above terms.

3 List the Appeal for further process on 28.08.2018.

(K.K. SONAWANE, J.)

Waishali
Sushil
Waghmare

Digitally signed
by Waishali
Sushil
Waghmare
Date:
2018.07.27
18:42:23 +0530