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

**CIVIL APPLICATION NO. 2761 OF 2018
IN
FIRST APPEAL (STAMP) NO. 16440 OF 2018**

Mrs. Ajanta Mayuresh Sen @ Pawar .. Applicant

In the matter between

Cholamandalam M.S. General Insurance
Co. Ltd. .. Appellant

Vs.

Mrs. Ajanta Mayuresh Sen @ Pawar & Anr. .. Respondents

Mr. Nikhil Mehta I/b KMC Legal Venture for the Applicant.

Mrs. Rina Kundu for Respondent No.1.

CORAM : K. K. SONAWANE, J.

DATE : 10th AUGUST, 2018.

P. C. :

1. Heard learned Counsel for applicant-original claimant and learned Counsel for appellant-Insurance Company. Perused application and other documents produced on record.
2. The applicant preferred the present application seeking permission to withdraw compensation amount of Rs.30,77,327/- deposited before M.A.C.T., Mumbai in M.A.C.P. No. 811 of 2011. Learned Counsel for appellant-Insurance Company raised objection and submits that the Insurance Company has already preferred appeal against the impugned Judgment and Award passed by the Tribunal. It has been alleged that the Tribunal has awarded exorbitant and excessive amount without taking into

consideration the nature of the injuries and loss caused to the claimant in its proper perspective. Therefore, learned Counsel for appellant-Insurance Company requested that the applicant-original claimant may not be allowed to withdraw the amount till final adjudication of the appeal.

3. Having given anxious consideration to argument advanced on behalf of both sides, I am not in agreement with the learned Counsel for the appellant-Insurance Company to preclude the applicant-original claimant to avail benefits of the impugned Award till final decision of the present appeal on merits. Admittedly, the applicant-original claimant pursuing the present claim petition since the year 2011. The learned Tribunal after appreciating the entire evidence on record awarded the compensation amount in favour of claimant. In such circumstances, it would be justifiable to allow the applicant-claimant to withdraw 50% of the compensation amount deposited in this matter. Definitely, it would subserve the purpose to provide some sort of solace to the applicant-original claimant. Hence, the application deserves to be allowed.

4. Accordingly, the Civil Application stands allowed partly.

5. The applicant-claimant is hereby permitted to withdraw 50% lumpsum amount of Rs.15,00,000/- from the compensation amount deposited by the appellant-Insurance Company before M.A.C.T., Mumbai in the present matter. The applicant-original claimant shall furnish undertaking before withdrawal of the amount to the effect that she would refund the entire amount so withdrawn forthwith in case any contingency

arises in the appeal. Rest of the balance decretal amount remained deposited with the M.A.C.T., Mumbai be invested in FDRs in any nationalized bank for a period of two years or till decision of the present appeal whichever is earlier with liberty to renew FDR in future, if required.

6. The Registrar of the M.A.C.T., Mumbai to take requisite steps for disbursement of the amount as directed in favour of the applicant-original claimant and file the compliance report to this Court.

7. Accordingly, the Civil Application stands disposed of in above terms.

Arjun
Machhindra
Kadam

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by Arjun
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Kadam
Date:
2018.08.20
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[K. K. SONAWANE, J.]