

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

**CIVIL APPLICATION NO. 2697 OF 2018
IN
FIRST APPEAL STAMP NO. 17607 OF 2017**

Vimal Sunil Shinde and another ... Applicants

In the matter of

Iffco Tokio General Insurance Company Ltd. ... Appellant

Versus

Vimal Sunil Shinde and others ... Respondents

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Mr. A. M. Gokhale for applicants-claimants.

Ms. Nisha Gandhi i/b Res Juris for respondent-insurance company.

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CORAM : K. K. SONAWANE, J.

DATE : 3rd AUGUST, 2018.

P. C.:

1. Heard learned Counsel for the applicant who is claimant and the learned Counsel for respondent-insurance company.

2. The applicant-claimant moved the present application seeking permission to withdraw the compensation amount deposited by the respondent-insurance company before the M.A.C.T. Thane, to the tune of Rs. 12,56,357/-.

3. Learned Counsel for the respondent-insurance company raised objection and submits that the driver of the offending vehicle was not having valid permit during the relevant time of accident. Learned Counsel for the respondent requested not to allow the claimant to withdraw the amount.

4. In view of reasons mentioned in the application and the grounds of objection raised on behalf of appellant-insurance company, there is no impediment to allow the applicant-original claimant to withdraw compensation amount. It is to be considered that even in case the respondent-insurance company succeeded in the appeal on technical issue of valid permit, the monetary liability could be shifted on the owner of offending vehicle. But, it would be unjust and improper to preclude the applicant-claimant from the benefit of judgment and award passed by the Tribunal for loss caused to them. In such circumstances, I find it justifiable to allow the applicant to withdraw at least lumpsum amount of Rs.10,00,000/- from the compensation amount awarded by the Tribunal. Hence, civil application deserves to be allowed.

5. Accordingly, civil application is allowed partly. The applicant is hereby permitted to withdraw lumpsum amount of Rs.10,00,000/- from the amount of compensation deposited before the M.A.C.T. Thane in M.A.C.P. No.651 of 2014, subject to condition that the applicant shall furnish undertaking that in case any contingency arises in the appeal, she would refund the entire amount so withdrawn forthwith as per direction of this Court. The rest of the balance amount deposited before the M.A.C.T. Thane, be invested in any nationalised bank in FDR account for a period of two years or till decision of present appeal on merit, whichever is earlier, with liberty to renew the FDR in future, if required.

6. It is stipulated that from the total sum of Rs.10,00,000/- allowed to be withdrawn by the applicant-claimant, a sum of Rs.5,00,000/- be invested in the name of applicant-claimant Smt. Vimal Sunil Shinde in any nationalised bank in FDR account for a period of five years and rest of the balance amount of Rs.5,00,000/- be disbursed in her favour i.e. applicant-claimant Vimal Sunil Shinde.

7. The Registry of the M.A.C.T. Thane shall take requisite steps for disbursement of amount in favour of applicant as mentioned above and forward report of the same to this Court.

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

(K. K. SONAWANE, J.)

Shridhar
Marutirao
Sutar

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Shridhar Marutirao Sutar
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