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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL No. 326 OF 2017
WITH
CIVIL APPLICATION No. 1096 OF 2017
WITH
CIVIL APPLICATION No. 2277 OF 2018

Bajaj Allianz General Insurance Co. Ltd. ... Appellant
Vs.
Manoj Dattatraya Gaikwad & Ors. ... Respondents

Mr. D. S. Joshi, for the Appellant, for Applicant in CAF.
1096/2017, for the Respondent No. CAF. 2277/2018.

Mr. S. D. Dharmadhikari, for the Respondent No. 2 in FA.
326/2017 & CAF. 1096/2017.

Mr. P. G. Sarda, for Respondent No. 1 in FA. 326/2017,
CAF.1096/2017 and for Applicant in CAF. 2277/2018.

CORAM : V. M. DESHPANDE, J.

DATE : JULY 4, 2018

PC :-

FIRST APPEAL No. 326 OF 2017

1. Heard learned counsel for the Appellant. **Admit.**
Learned counsel Mr. P. G. Sarda, and the learned counsel Mr. S.
D. Dharmakari waive notice for Respondent No. 1 and the

Respondent No. 2 respectively. Call for record and proceedings.

CIVIL APPLICATION No. 2277 OF 2018

2. Learned counsel for the Appellant seeks leave to correct number of the civil application in the title cause. Leave is granted. Amendment to be carried out forthwith.

3. This is an application moved by the original claimant for withdrawal of the amount, deposited by the insurance company. Heard the learned counsel for the Applicant and the learned counsel for the insurance company. On perusal of the impugned judgment and award, it is crystal clear that PW 4 Dr. Sunil Handralmath has provided the disability certificate (exhibit 47), which shows that claimant has sustained 83% permanent disability due to the injury to the spinal cord.

4. In that view of the matter, since the Applicant has sustained 83% permanent disability, he is entitled to receive the compensation amount. Hence, the following order:

(i) Applicant is entitled to receive 50% of the decretal amount, deposited by the insurance company with

the Tribunal. At the time of withdrawal of the said amount, Applicant shall give an undertaking that in the event, Appellant insurance company succeeds in the appeal, Applicant shall refund the said amount to the insurance company together with interest that may be determined by the Court at that time;

- (ii) Registry is directed to transfer the statutory deposit of Rs. 25,000/- to the Motor Accident Claims Tribunal at Solapur;
- (iii) After transfer of the statutory deposit, learned Tribunal shall invest the balance 50% of the decretal amount and the statutory deposit amount in any nationalised bank, initially for a period of three years and renew the same as and when occasion arises, in order to save interest of the claimant;
- (iv) Applicant is at liberty make an application after two years for further withdrawal of the claim amount, if

he is able to demonstrate the claim for such withdrawal.

- (v) Civil Application No. 2277 of 2018 is partly allowed in the aforesaid terms.

CIVIL APPLICATION No. 1096 OF 2017

5. This is an application for stay filed by the insurance company to the impugned judgment and award dated 1st July, 2016 passed in M. A. C. P. No. 129 of 2013. Since Applicant insurance company has deposited the entire decretal amount with the Tribunal and the original claimant is allowed to withdraw 50% of the decretal amount, and an ad-interim stay dated 17th April, 2017 granted in favour of the insurance company is in operation. Civil Application No. 1096 of 2017 is made absolute in terms of prayer clause (a), and is accordingly disposed of.

Sd/-
[V. M. DESHPANDE, J.]

Vinayak Halemath