

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

908 CIVIL APPLICATION NO.3698 OF 2019
IN FA/4072/2016

VIKAS BAPURAO PATIL
VERSUS
NATIONAL INSURANCE CO. LTD. THR ITS DIV. MANAGER AND
ANR

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Advocate for Applicant : Mr.Sant Kishor C.
Advocate for Respondent No. 1 :Mr.S.R.Bodade
Advocate for Respondent No. 2 : Mr.G.S.Rane

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CORAM : SUNIL K.KOTWAL, J.

DATE : 11th JUNE, 2019

O R D E R :

This application is filed by original claimant for withdrawal of compensation amount deposited by the insurer of the offending vehicle and in the alternate, to fix the case for final hearing at the earliest date. However, at the stage of argument, the learned counsel for applicant/claimant has sought time to file additional documentary evidence by filing appropriate application. Accordingly, time was granted after hearing learned counsel for both parties. However, as final hearing could not be sought, this application for withdrawal is taken up for hearing.

2. Heard learned counsel for applicant/claimant, opponent No. 1, insurer and the opponent No. 2, the owner of the offending vehicle. Though learned counsel for both parties argued on merits of the matter, while considering this application for withdrawal of deposited compensation amount, this Court cannot express anything on merits. This Court can only examine, whether the discretion can be exercised, to allow applicant/claimant to withdraw deposited compensation amount.

3. Learned counsel for respondent No.1 has raised objection regarding breach of condition of policy of insurance mainly on the ground that the offending vehicle was used on 'Hire and Reward' basis , therefore, policy of insurance does not cover risk of the claimant occupant of the Car involved in the accident.

4. This argument was replied by the learned counsel for applicant/claimant on the ground that no

evidence is available on record to hold that the Car was used on 'Hire and Reward' basis.

5. With the assistance of learned counsel for both parties, I have gone through the judgment passed by the Tribunal. The Tribunal awarded total compensation of Rs. 13,48,000/-, with interest @ 7.5% p.a. From the cursory look to the judgment passed by the Tribunal, it seems that on account of accidental injuries, the claimant has become totally disabled person. While passing the order in Civil Application No. 3705 of 2018, this Court has already allowed claimant to withdraw amount of Rs. 1,00,000/-, out of deposited amount. This application for withdrawal of additional amount is filed on the ground that as the claimant has lost his earning capacity, his financial condition is pathetic, therefore, he prays for permission to withdraw some more amount.

6. Considering the defence raised by the

Insurance Company and the contention of the claimant as well as medical evidence of the doctor who treated the claimant and the doctor who issued permanent disability certificate, I am of the opinion that some additional amount can be allowed to be withdrawn by the claimant for his survival. By that time, even the insurer of the offending vehicle can take steps for filing additional evidence, so that appeal can be finally heard at the earliest. Therefore, permission is granted to the applicant/claimant to withdraw additional amount of Rs. 5,00,000/- with appropriate interest thereon out of total deposited compensation amount, subject to filing of written undertaking through Tribunal in First Appeal re-deposit the withdrawn amount as and when directed by this court.

7. The written undertaking shall be filed before the Tribunal within the period of four weeks from the date of passing of this order and thereafter the Tribunal shall transmit the written undertaking

in First Appeal No. 4072 of 2016 pending before this Court.

8. Relevant amount of compensation which is to be withdrawn by the claimant with appropriate interest thereon be transmitted to the Tribunal for its disbursement.

9. Civil Application is disposed of in above said terms.

[SUNIL K.KOTWAL, J.]

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