

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

939 CIVIL APPLICATION NO.4201 OF 2019
IN
FA/18/2019

BAPURAO VITHOBA MISAL
VERSUS

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD., THR
ITS AUTHORIZED SIGNATORY AURANGABAD

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Mr. A.I.Deshmukh, Advocate for Applicant.

Mr. S.G.Chapalgaonkar, Advocate for R – 1.

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CORAM : V.L.ACHLIYA, J.

DATE : 26/03/2019

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ORAL ORDER :

1. The applicant/original respondent No. 1 has moved this application for permission to withdraw the amount deposited by the appellant.
2. Heard learned counsel for applicant and the appellant/insurance company. Perused the Judgment and order passed by the Tribunal and the challenges raised in the appeal.
3. In brief, it is the contention of learned counsel for appellant that the appellant has good case to succeed in appeal. By referring the judgment and award passed in the matter, learned counsel submits that there is arithmetical mistake on the part of trial Court in assessing the compensation amount under

the head of loss of income. It is contended that due to wrong calculation on account of loss of earning, the amount of Rs. 5,14,800/- has been assessed though the amount to be correctly worked out as Rs. 2,77,000/-. Similarly, the negligence on the part of other vehicle has been assessed to 30% only though there was complete negligence on the part of the applicant. Similarly, the interest is awarded @ 10% which is also not in consonance with the amount to be awarded in the matter.

4. On the other hand, learned counsel for applicant supported the award passed by the Tribunal and submits that there is absolutely no case to succeed in appeal.

5. Considering the submissions advanced and the challenges raised in the appeal, following order is passed.

ORDER

[i] The application is allowed.

[ii] Out of the amount of Rs. 7,03,052/- deposited by the insurance company, the applicant is permitted to withdraw the amount of Rs. 3 Lakhs on furnishing an undertaking to the satisfaction of the Registrar [Judicial] with specific stipulation that in case the

award is set aside or modified the applicant shall deposit the amount in this Court within four weeks from the date of the order.

[iii] After making the payment of Rs. 3 Lakhs to the applicant, the balance amount be invested in fixed deposit initially for a period of three years from the date of this order with the standing instructions to reinvest the amount for a further period till disposal of appeal. The payment of amount of compensation shall be subject to final out-come of the appeal. Needless to observe that all the payments to be made to the claimants shall be through transfer of amount in the account of the applicant.

[V.L.ACHLIYA]
JUDGE

KNP.