

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

**999 CIVIL APPLICATION NO.8048 OF 2019
IN FAST/32706/2017**

**SARLA SOMINATH DHAVALÉ
VERSUS
NEW INDIA INSURANCE CO. LTD., THR ITS MANAGER AND ORS**

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Advocate for Applicant : Mr. Humbe Vilas M.
Advocate for Respondent No.1 : Mr. S. G. Chapalgoankar

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 12th JULY 2019

ORDER :

1. Present application has been filed for withdrawal of the amount that has been deposited by the Insurance Company. In pursuant to the award, amount of Rs.10,44,000/- has been deposited. The learned Advocate for respondent No.1 has strong objection for allowing the application on the ground that there is clear evidence showing non involvement of the vehicle insured with the appellant. Though the accident had taken place on 13.1.2015, the FIR has been filed against unknown vehicle. Statement of alleged eye witness was taken after three months. The said eye witness was examined by the claimants. However, according to the learned Advocate for the appellant, there were admissions given by him showing that he is a got up witness.

2. Perusal of the impugned judgment would show that there is appreciation of evidence of PW-2 Rameshwar who was stated to be the eye witness and the observation by the tribunal that nothing contrary has been transpired from his cross examination taken by the learned Advocate for the respondents. Under such circumstance, when the competent Court comes to a conclusion regarding the liability of the respondents, case is made out for partial withdrawal of the amount.

3. Applicant is allowed to withdraw amount of Rs.2,50,000/- subject to giving an undertaking that he would make the said amount good, if directed at the time of final disposal of the appeal.

4. Civil Application stands disposed of accordingly.

(Smt. Vibha Kankanwadi, J.)

Shubham/