

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.794/2019
IN
FIRST APPEAL NO.191/2009

Shekharbhai Thakur ... Applicant.
Vs.
Maharashtra State Road Transport ... Respondent.

Mrs.Sultana Sonawane, advocate for applicant.
Mr. P.B. Kadam, adv. i/b G.S.Hegde and Assocaite, for respondent.

CORAM : K.K.TATED, J.
DATED : JUNE 21, 2019.

P.C.

Heard learned counsel for parties.

2 Applicant/original claimant submits that, in the present proceeding, he filed application no.3488/1999, u/s 166 of Motor Vehicle Act for compensation of Rs.25,00,000/- before the Motor Accident Claim Tribunal,Mumbai. Same was partly allowed, holding that, the claimant is entitled to sum of Rs.14,51,130/- by way of compensation with interest @ 7.5% pa. She submits that being aggrieved by the said judgment and award, Appellant preferred first appeal and application for stay of operation and implementation of judgment and award dated 21.04.2008 passed in Application No.3487/2019.

3. Learned counsel for applicant submits that the applicant was permitted to withdraw sum of Rs.10 lakhs by furnishing bank guarantee by order dated 4.5.2012 passed by this court in Civil application no.1608/2012. Para 7 of the said order

reads thus:

“7. The Civil application is allowed in following terms:

(i) The applicant is entitled to withdraw a sum of Rs.10,00,000/- (Rupees Ten lakhs only) from the deposited amount in Motor Accident Claims Tribunal Mumbai by furnishing bank guarantee of any Nationalized bank.

(ii) The applicant to file undertaking before the Tribunal that, he will renew the bank guarantee from time to time till the hearing and final disposal of the present First appeal.”

4. Learned counsel for applicant submits that for providing bank guarantee, applicant obtained bank guarantee by providing security of her daughter's property. Now applicant's daughter require her property free from encumbrances. Hence, applicant made present application for modification of earlier order dated 4.5.2012. She submits that as per the order dated 5.4.2019 passed by this Court, applicant deposited sum of Rs.10 lakhs before Tribunal by demand draft dated 2.5.2019 issued by IDBI bank bearing No.010538. Said demand draft deposited by applicant in Tribunal on 2.5.2019 alongwith her application Exh.B-1 on page no.6 to application.

5. Learned counsel for applicant submits that in view of re-deposit of the entire amount in Tribunal, this Court be pleased to direct the tribunal to hand over original copy of bank guarantee to applicant for cancellation. She submits that if application is not allowed, irreparable loss would be caused to applicant.

6. On the other hand, learned counsel for appellant submits that if entire amount is deposited by applicant then they have no objection for allowing the applicant to withdraw bank guarantee.

7. I have heard both the sides. It is to be noted that in the present proceedings, this court passed order dated 5.4.2019 permitting applicant/claimant to deposit sum of Rs.10 lakhs in Motor Accident Claim Tribunal, Bombay for withdrawing original bank guarantee. Pursuant to the said order, applicant deposited said amount with the Tribunal. In view of this fact, I am of the opinion that applicant has made out a case for allowing this civil application. Only question of interest for this period i.e. date on which applicant withdrawn sum of Rs.10 lakhs, and the date on which he re-deposited entire amount, is required to be decided at the time of final hearing.

8. Hence, the following order.

a) Motor Accident Claim Tribunal Bombay is directed to return original bank guarantee furnished by the applicant for withdrawal of Rs.10 lakhs, after verifying whether applicant deposited sum of Rs.10 lakh as per order dated 05.04.2019.

b) Tribunal is directed to invest said Rs.10 lakhs deposited by applicant, in fixed deposit in any Nationalized bank, initially for a period of one year and thereafter same be continued till further orders.

c) No order as to cost.

d) Civil application stands disposed of accordingly.

e) Parties to act on authenticated copy of this order.

(K.K.TATED, J.)

