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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.219 OF 2019
IN
FIRST APPEAL NO.790 OF 2017**

Prasad Prakash Shirke ... Applicant.

In the matter between

The New India Assurance Co.Ltd. ... Appellant.

V/s.

Prasad Prakash Shirke
and anr ... Respondents

Mr. T.J. Mendon, for the applicant.

Mr. Devendranath Joshi, for appellant.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 17th JANUARY, 2019.

P.C. :

1] Heard learned counsel for the applicant and learned counsel for appellant Insurance Company.

2] This application is preferred by the original claimant, who has sustained injuries in the accident, for withdrawal of the amount of compensation deposited by the Insurance Company in the Court.

3] It is submitted by learned counsel for applicant claimant that the applicant has sustained 100% disability in the said accident, he is totally bed ridden, his father has taken V.R.S., in order to look

after him. He requires at least expenses of Rs.3,000/- to Rs.4,000/- per day and therefore, withdrawal of the amount of compensation is utmost necessary.

4] Learned counsel for the Insurance Company, relying on the F.I.R. and spot panchnama, submits that the accident has occurred due to sheer negligence of the applicant/claimant. According to him there is contributory negligence on the part of applicant at least upto 75% whereas, the Tribunal has attributed him only 25% of the negligence. Moreover, it is submitted that the amount of compensation awarded to the applicant is also on excessive side.

5] Considering the submissions made by both parties, in my considered opinion, at this stage, having regard to the requirements of the applicant, he is permitted to withdraw an amount of Rs.20,00,000/- from the decretal amount deposited by the appellant Insurance Company, in the trial Court, on furnishing usual undertaking, with liberty to the applicant to apply again for withdrawal as and when necessity arises.

6] Application is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]