

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.686 OF 2019
IN
FIRST APPEAL NO.730 OF 2017

Smt. Sanjeevani Chandrakant Sarode .. Applicant
Versus
The New India Insurance Co. Ltd. .. Respondent

Mr. R.S. Pachundkar for applicant.
Mr. S.D. Paithane I/b H.G. Misar for respondent.

CORAM: K.K. TATED, J.

DATED : MARCH 19, 2019.

P.C. :

- 1 Heard learned Counsel for parties.
2. By this Civil Application, applicant/original claimant is seeking permission to withdraw the amount deposited by the appellant-Insurance Company in the present proceedings.
3. The learned Counsel for the applicant submits that in an accident dated 26.05.2007, applicant lost her son. He submits that during the pendency of the present First Appeal, the applicant also lost her husband on 30.08.2013. He further submits that the applicant is not keeping well. She is seeking medical treatment. He submits that applicant received estimate

from Medical Officer, Rural Hospital, Shirur Dist.Pune at Exhibit-B. It shows that she require about 90,000/- for her medical treatment.

4. The learned Counsel for the applicant submits that this Court by order dated 05.02.2015 in Civil Application No.1856 of 2014 permitted applicant to withdraw a sum of Rs.20,000/- without furnishing any security. Advocate for applicant submits that in the interest of justice this Hon'ble Court be pleased to allow the applicant to withdraw the remaining amount for her medical treatment and other expenses. He submits that applicant don't have any source of income at present. He submits that if Civil Application is not allowed, irreparable loss will cause to them.

5. On the other hand, the learned Counsel appearing on behalf of Insurance Company vehemently opposed the present Civil Application. He submits that Motor Accident Claim Tribunal, Pune by its judgment and award dated 21.06.2013 awarded total compensation of Rs.4,12,000/- with 9% interest. He relies on the operative part of the impugned judgment, which reads thus :-

“1. The Petition is partly allowed with proportionate costs.

2. Opponent Nos. 1, 3 and 4 are jointly and severally liable to pay compensation of Rs.4,12,000/- (Rs. Four Lakh Twelve Thousand only) (including interim compensation), along with interest @9% per annum, from the date of petition, till realization of entire amount to the applicants in following proportionate.

a) Opponent No.1 is liable to pay compensation to the extent of 60% and opponent Nos. 3 and 4 are jointly and severally liable to pay compensation to the extent of 40% to the applicants.

3. Compensation shall be paid to the applicant Nos. 1 and 2, in equal proportion.

4. Out of compensation payable to the applicant Nos. 1 and 2, Rs.50,000/- (Rs. Fifty thousand only) each b invested in Fixed Deposit Account in the name of applicant Nos. 1 and 2, in any Nationalized Bank of their choice, for the period of 3 years, and balance amount be paid to them by separate account payee cheques, on due identification and verification.

5. Claim against opponent No.2 stands rejected.

6. Award be drawn accordingly.”

6. Learned Counsel for Insurance Company submits that if the entire amount is withdrawn by the applicant without furnishing security and in case the appellant succeeds in the First Appeal, then, it will be very difficult for them to recover the entire amount from the applicant/original claimant. Therefore, there is no question of permitting the applicant to withdraw the amount without any security.

7. I heard both the sides at length. It is to be noted that in the present proceedings, the applicant during the pendency of the First Appeal, lost her husband also. Not only that, applicant already placed on record the medical certificate showing that she require near about Rs.90,000/- for her medical treatment.

8. Considering these facts and the earlier order dated 05.02.2015 passed by this Court in Civil Application No.1856 of 2014, I am of the opinion that the applicant can be permitted to withdraw some amount without furnishing any security and some amount with furnishing security. Hence, following order :-

- a) Applicant is permitted to withdraw a sum of Rs.50,000/- without furnishing any security.
- b) Applicant is further permitted to withdraw additional sum of Rs.1,00,000/- by furnishing solvent security to the satisfaction of the tribunal within two months from today.
- c) Civil Application stands disposed of accordingly.
- d) Withdrawal of the amount will be subject to the outcome of the First Appeal.

(K. K. TATED, J.)