

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 1954 OF 2019
IN
FIRST APPEAL No. 375 OF 2017

Mr. Narendra Gopinath Gawade ...Applicant

In the matter of

The New India Ass. Co. Ltd. ...Appellant

Vs.

Narendra Gopinath Gawade and Ors. ...Respondents

Mr. T.J. Mendon for Applicant – Orig. Respondent No.1

Mr. S.M. Dange for Appellant

CORAM : SHRI K.K. TATED, J.

DATE : JUNE 6, 2019

P.C.:

1. Not on Board. At the request of learned counsel for the Applicant, for urgent orders, taken on production board.
2. Heard learned counsel for the parties.
3. By this civil application, the Applicant, Original Claimant is seeking permission to withdraw the amount deposited by the Appellant- Insurance Company in the Trial Court.
4. Learned counsel Mr. T.J. Mendon for the Applicant submits that in accident which was occurred on 28th October, 1994, the Applicant lost his left hand. He submits that thereafter, the Applicant filed claim petition in the Trial Court and the Trial Court has held that the

Applicant -Original Claimant is entitled sum of Rs.3,00,000/- by way of compensation with interest @6% per annum from 19.04.1995 till realization. He submits that in the interest of justice, this Hon'ble Court be pleased to permit the Applicant to withdraw the amount during the pendency of the First Appeal.

5. On the other hand, learned counsel Mr. S.M. Dange for the Appellant- Insurance Company vehemently opposed the present civil application. He submits that the Applicant was traveling as a gratuitous passenger in the said truck. Therefore, insurance company is not liable to pay any compensation to the Applicant. He submits that the Tribunal has awarded the compensation on higher side. He submits that if the entire amount is withdrawn by the Applicant, then nothing will survive in the present First Appeal. He submits that they have good chance of success in the present proceeding. He submits that it will be very difficult for the Insurance Company to recover entire amount from the Applicant, in case, Insurance Company succeeds in the first appeal. Therefore, this civil application may not be allowed.

6. Heard both the sides at length. It is to be noted that in the accident, the applicant lost his left hand and he has also sustained several injuries. Though the accident had occurred in 1994, he has not received any payment for several years except Rs.25,000/-.

7. Considering this fact, I am of the opinion that the Applicant is entitled to withdraw some amount of compensation without furnishing any security, but subject to the outcome of the First Appeal. Hence, following order:

ORDER

- (A) The Applicant is permitted to withdraw sum of Rs.1,25,000/- without furnishing any security, but, subject to the outcome of the First Appeal.
- (B) Civil Application stands disposed of accordingly.
- (C) No order as to costs.

(K. K. TATED, J.)