

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1956 OF 2019
IN
FIRST APPEAL NO. 752 OF 2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. D.S. Joshi for the Applicant.
Mr. Rahul Mehta I/b KMC Legal Venture for the Respondent.

CORAM: K.K.TATED, J.
DATED : 26/08/2019

P.C.

- 1 Heard learned Counsel for the parties.
- 2 By this Civil Application, the Applicant/ original Claimant is seeking permission to withdraw the amount deposited by the Insurance Company to comply Judgment and Award dated 03.03.2018 passed by MACT, Mumbai in MACP No. 2561 of 2008.
- 3 The learned Counsel for the Applicant submits that accident was occurred on 19.08.2007. The Applicant sustained several injuries viz. I) Head Injury with fracture left maxilla, II) fracture left frontal bone, III) Cranio facial fracture involving the orbit and paranasal sinuses, IV) CLW left frontal region and nostril.

4 The learned Counsel for the Applicant submits that on the date of accident, the Applicant was 17 years old. Therefore, they filed Claim Petition under Section 166 of the M.V. Act for compensation of Rs.1 Crore. He submits that because of accident the Applicant was taken to MGM Hospital, Vashi as indoor patient from 19.08.2007 to 24.08.2007. Thereafter he was again admitted in MGM Hospital at Kamothe on 27.08.2007 and discharged on 29.08.2007. Thereafter, he was admitted in Dr. D. Y. Patil Hospital at Nerul on 30.08.2007 and discharged on 08.09.2007. Again he readmitted in same hospital on 18.02.2008 and discharged on 23.02.2008. The learned Counsel for the Applicant submits that for the medical treatment, the Applicant spent near about Rs. 8 lakhs.

5 The learned Counsel for the Applicant submits that Applicant suffered 36.25% Neuro disability. He submits that the Applicant has examined AW-2 at Exh. 45 Dr. V.D. Joshi. Considering this fact, the Tribunal held that the Applicant suffered 50% disability and awarded compensation of Rs.22,82,930/- only with interest @ 9% per annum.

6 The learned Counsel for the Respondent

vehemently opposed the present Civil Application. He submits that the Tribunal awarded compensation on higher side. He submits that though Doctor certified disability to the extent of 36.25% the Tribunal has considered 50% and awarded compensation on the basis of the said disability. He submits that even the Tribunal has awarded sum of Rs.5 lakhs for loss of amenities for future life. Apart from that the Tribunal awarded an amount of Rs. 22,82,930/- which is on higher side. He submits that they have good chance of success in the present matter. He submits that if entire amount is recovered by the Respondents Claimants in Execution Application, then nothing will survives in this First Appeal. Hence, there is no question of permitting the Applicant to withdraw the amount.

7 I heard both the sides at length. It is to be noted that on the date of accident, the Applicant was 17 years old. Because of accident, he was admitted in the hospital for more than 2 months. Even Doctor certified the injury to the extent of 36.25% and that was proved by the Applicant by examined Dr. V.D.Joshi.

8 Considering these facts and the disability

of the Applicant, I am of the opinion that Applicant can be permitted to withdraw 50% of the amount without furnishing any security, but subject to the outcome of the First Appeal.

9 Hence, following order is passed:

a) Applicant is permitted to withdraw 50% of the total compensation amount without with interest furnishing any security, but subject to the outcome of the First Appeal.

b) Civil Application stands disposed of accordingly. No order as to costs.

(K.K.TATED, J.)