

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

**CIVIL APPLICATION NO.35 OF 2016
IN
FIRST APPEAL NO.2528 OF 2011**

Subhash Baban Khairnar .. Applicant

In the matter between

The State of Maharashtra .. Appellant

Vs.

Subhash Baban Khairnar & Anr. .. Respondents

Ms.Avanti Inamdar i/by Mr.Rameshwar N. Gite for the applicant/orig.respondent no.1.

Ms. Anamika Malhotra, AGP for the appellant-State.

Mr.Rahul D. Motkari for the respondent no.2.

CORAM : R.D.DHANUKA, J.

DATE : 7th November 2019

P.C.:

. By this civil application, the applicant (original claimant) seeks liberty to withdraw the amount deposited by the insurance company at the time of admission of this appeal.

2. Heard learned counsel for the parties. No affidavit-in-reply is filed to this civil application. The MACT, Nashik has awarded a sum of Rs.3,00,000/- including amount of Rs.25,000/- against no fault liability to the claimant with interest.

3. It is the case of the applicant that the applicant has suffered 45% disability due to accident which was the subject matter of the claim

before the MACT, Nashik in MACP No.837 of 2004. Pursuant to the order dated 13th April 2012, the insurance company has deposited a sum of Rs.4,18,500/- in the trial Court.

3. After considering the impugned judgment and order passed by the learned trial Judge, I pass the following order:-

ORDER

(i) The applicant is allowed to withdraw 50% of the amount deposited by the insurance company on the condition that the applicant will furnish an undertaking before this Court within two weeks from today that if the applicant does not succeed in this first appeal, the applicant would return the entire amount with interest as may be directed by this Court. Amount would be withdrawn only after furnishing such undertaking.

(ii) In so far as the balance 50% of the amount is concerned, the applicant would be at liberty to withdraw the said amount upon furnishing bank guarantee of a nationalised bank in favour of MACT, Nashik within four weeks from today.

(iii) The said bank guarantee shall be kept alive for five years and thereafter for a like period after obtaining further orders from the Court depending upon the pendency of this appeal.

(iv) It is made clear that if the undertaking is not furnished within two weeks from the date of this order, the order passed by this Court allowing the applicant to withdraw 50% of the amount deposited by the insurance company to stand vacated without further reference to the Court.

(v) It is made clear the if the bank guarantee is not furnished within the time prescribed, the Registrar of this Court shall re-invest the balance 50% amount in a fixed deposit of a nationalized bank initially for a period of five years and thereafter for like period depending upon the pendency of the arbitration petition.

4. Civil application is disposed of on aforesaid terms. No order as to costs. Parties as well as the trial Court to act on the authenticated copy of this order.

R.D.DHANUKA, J.