IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2950 OF 2019
IN
FIRST APPEAL NO. 448 OF 2019

Bharat Baban Shinde .. Applicant
Vs.
Future General India Insurance Co. Ltd. .. Respondents

Mr. T.S. Ingale for the Applicant.
Ms.Pooja Singh a/w Deepika Prabhale is Res Juris for Respondents.

CORAM : K.K.TATED, J.
DATED : 9th September, 2019

P.C.

1. Heard Learned Counsel for the parties.

2. By this Civil Application, Applicant/Claimant is seeking permission to withdraw the remaining amount deposited by the insurance company to satisfy the Judgment and Award dated 17th September, 2018 passed by the Motor Accident Claims Tribunal, Sangli in Motor Accident Claim Petition No. 164 of 2014.

3. The Learned Counsel for Applicant submits that, an accident which occurred on 25th May, 2013, applicant sustained injury. He submits that, thereafter the Doctor declared 60% disability. He submits that, the applicant filed an application under section 166 of Motor Vehicles Act claiming the compensation of

Rs. 1,42,70,000/- with interest. He submits that the Tribunal awarded only sum of Rs. 13,75,880/- with interest. He submits that the applicant filed First Appeal No. 540 of 2019 for remaining compensation. He submits that, the said appeal admitted by this Court.

4. The Learned Counsel for the Applicant submits that, this Court by Order dated 23rd April, 2019 permitted the applicant to withdraw sum of Rs. 3,00,000/- with accrued interest without furnishing any security but subject to outcome of the First Appeal.

5. The Learned Counsel for Applicant submit that, on the date of accident, the applicant was working in Military Department. He submit that, because of accident, Medical Board of Military held that applicant is unfit for the service in Indian Military Service. Since then he is getting only pension. He submits that, he has to maintain 6 family members. He submits that, his minor son Sahil who is 16 years old taking education at Goregaon, Mumbai and another minor son Krishna aged 13 years is studying in Arhit International School at Sangli. He submits that, he had to maintain his parents also who are senior citizens. Therefore, it is very difficult for him to maintain 6 members of family in pension. In

support of his contention he rely on para no.4 of Civil Application which read thus :

> *"4. The Applicant states that, because of the accidental injuries he has sustained permanent physical disability which was arrived at 40% because of injuries sustained to shaft tibia right and and 20% disabilities for injury of intra articular fracture of middle phalanx right little finger. Because of the permanent physical disability he is not able to work which he was doing at the time of accident in question and as such there is 100% loss of earning capacity i.e. functional disability. The Applicant cannot move out without an attendant. There are 6 persons in his family depending on the Applicant Claimant and except pension amount there is no other source of livelihood to his family. The Applicant's wife doing household duties, the minor son Sahil who is now 16 years is student studying at Goregaon, Mumbai and another minor son Krishna aged 13 years studying in Arhit International School at Sangli and father Baban Shinde is about 70 years old and mother Rajakka is about 65 years old and the parents having old and ill unable to do any work and depending on the Applicant Claimant. The Applicant Claimant is required to arrange for educational expenses for his children which runs to more than Rs. 3,00,000 per year. The Applicant Claimant has incurred lot of medical expenses more than Rs. 1,00,000/- and also required to spend periodical medical expenses. The Applicant has also raised hand loans from his relatives to maintain his family and whatever amount of Rs. 3,00,000/- permitted to be withdrawn by his Hon'ble Court will have to be spent for repaying the hand loans and towards medical expenses incurred. The Applicant Claimant has already filed First Appeal No. 540/2019*

> *claiming enhancement of compensation being partly aggrieved and dissatisfied by the impugned Award passed by the Tribunal. Thus, considering these facts and circumstances and in the interest of justice, it is just and necessary to permit the Applicant to withdraw further sum of Rs. 10,00,000/- from the compensation amount of Rs.18,55,721/- deposited by the Appellant Insurance Company before the Tribunal."*

6. The Learned Counsel for the applicant submits that, in the interest of justice this hon'ble court be pleased to allow the applicant to withdraw the remaining amount deposited by the Appellant with accrued interest. He submits that, if the application is not allowed, irreparable loss will cause to the applicant.

7. On the other hand, the Learned Counsel appearing on behalf of Appellant insurance company vehemently opposed the present Civil Application. He submits that, this court by order dated 23/4/2019 already permitted the applicant to withdraw sum of Rs. 3,00,000/- with accrued interest. He submits that, if entire amount is withdrawn by the applicant/claimant, then nothing will survives in the First Appeal. He submits that, they have good chance of success in this First Appeal.

8. On the basis of this submission, Insurance Company submits that there is no substance in the present Civil Application and same is required to be dismissed with costs.

9. It is to be noted that in the present proceedings, in an accident, applicant sustained 60% disability. Not only that, he was discharge from Indian Military Service also. Since then he is getting only pension. Apart from that, he has to maintain his 6 family members out of that two are taking education and his parents are senior citizens. These facts are stated by the applicant in para no.1 and para no. 4 of Civil Application.

10. Considering these facts, I am of the opinion that applicant has made out case for allowing him to withdraw further amount hence, following order :

ORDER

a) Applicant is permitted to withdraw sum of Rs. 5,00,000/- with accrued interest without furnishing any security but subject to outcome of First Appeal.

b) Applicant to give Personal Indemnity Bond before the Tribunal that in case this Court call upon him to redeposit the entire amount then he will do the same with accrued interest.

c) Tribunal is directed to invest the remaining amount in fixed deposit of any nationalized bank initially for a period of one year and same to be continued till further order

d) Civil application stands disposed of accordingly.

e) No order as to costs.

(K.K.TATED, J.)