

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

**CIVIL APPLICATION NO.3602 OF 2015
IN
FIRST APPEAL NO.648 OF 2013**

Sanjay Rajaram Chawan .. Applicant

In the matter between

The Oriental Insurance Co. Ltd. .. Appellant

Vs.

Sanjay Rajaram Chawan & Anr. .. Respondents

Mr.Devendranath S. Joshi for the appellant.

Mr.T.J. Mendon for the applicant/orig. respondents.

CORAM : R.D.DHANUKA, J.

DATE : 7th November 2019

P.C.:

. By this civil application, the applicant (original claimant) seeks withdrawal of the amount deposited by the original appellant pursuant to the ad-interim order passed by this Court.

2. Application for withdrawal of the amount is vehemently opposed by the learned counsel for the appellant on the ground that applicant has not produced original policy but has only produced Motor Vehicle Cover Note dated 15th January 1999.

3. Learned counsel for the applicant, on the other hand, submits that that policy was issued by the respondent no.1 in favour of the owner of the vehicle who was the opponent no.2 before the MACT who was

not even served with summons by the respondent no.1. He submits that the person who had signed the said cover note dated 15th January 1999 was not even examined by the insurance company before the MACT. Learned counsel submits that all these aspects were dealt with by the MACT in great detail in the impugned award and thus the application for withdrawal of the amount be allowed without imposing any condition.

4. Mr. Joshi, learned counsel for the appellant does not dispute that no summons was issued to the opponent no.2. The person who had alleged to have signed the Motor Vehicle Cover Note dated 15th January 1999 was not even examined by the insurance company.

5. 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 the entire decretal amount deposited by the insurance company on the condition that the applicant will furnish an undertaking before this Court within four 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 Amount would be withdrawn only after furnishing such undertaking.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) It is made clear that if the undertaking is not furnished within four weeks from the date of this order, the order passed by this Court allowing the applicant to withdraw the entire decretal amount deposited by the insurance company to stand vacated without further reference to the Court.

6. 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.