IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1945/2019
IN
FIRST APPEAL (STAMP)14535/2009

United India Assurance Co. Ltd. ... Applicant.
Vs.
Ganesh E. Akre & Anr. ... Respondent.

Mr.SV Vidyarthi, advocate for applicant.
Mr.T.J. Mendon, advocate for respondent.

CORAM : K.K.TATED, J.
DATED : JUNE 17, 2019.

P.C.

Heard learned counsel for parties.

2 By this civil application, applicant/claimant is seeking permission to withdraw amount deposited by the Insurance company, to satisfy judgment and decree dated 27.112006 passed by Motor Accident Claim Tribunal, Mumbai in M.A.C.Application no. 3657/1994.

3. Ld. Counsel for applicant submits that, in an accident, which occurred on 29.05.1994 applicant lost his wife Smt.Smita who was in service and was getting monthly salary of Rs.1500/-. Because of the said accident and loss of wife, applicant had preferred M.A.C.Application no. 3657/1994 before Motor Accident Claim Tribunal, at Bombay u/s 166 of the Motor Vehicle Act, claiming compensation of 2 lakhs. He submits that the Tribunal after considering the evidence on record held that, claimant is entitled to sum of Rs.2,16,000/-

with interest @ 6% pa.

4. Ld. Counsel for applicant submits that though accident occurred on 29.5.1994 till today applicant has not received a single pai. Hence, in the interest of justice, this court be pleased to allow applicant to withdraw the amount deposited by company. If applicant is not allowed, irreparable loss will be caused to applicant.

4. On the other hand, learned counsel for appellant/Insurance company vehemently opposed the present application. He submits that if entire amount is withdrawn by applicant, then nothing will survive in the present proceeding. In the present matter before trial they specifically raised objection about breach of policy. On the date of accident, offending vehicle was not insured with the insurance Company. The Insurance Policy was not continued by paying premium in time. Hence, the company is not liable to pay any compensation. Considering these facts, in the interest of justice, this court be pleased to dismiss the application preferred by original claimants. If this court comes to conclusion that applicant can be permitted to withdraw the amount, in that case, applicant may be directed to provide bank guarantee to the satisfaction of Registry.

5. It is to be noted that that in an accident which occurred in 1994, the applicant lost his wife. At that time, wife was working and earning Rs.1500/- per month. Considering the fact, that the accident occurred in 1994 and the matter is pending till today , I am of the opinion that applicant can be

allowed to withdraw an 15% amount.

8. Hence, the following order.

a) Applicant is permitted to withdraw 15% amount of compensation with interest, without furnishing any security but subject to outcome of first appeal.

b)Tribunal is directed to deposit remaining amount in fixed deposit, of any Nationalized bank, initially for a period of one year and thereafter same be continued till further orders.

c) Civil application disposed of.

d) No order as to costs.

(K.K.TATED, J.)