IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4439 OF 2018
IN
FIRST APPEAL NO. 436 OF 2019

Mr. Gangadhar Dnyneshwar Borse …. Applicant

Versus

ICICI Lombard General Insurance Company Ltd. & Ors. ..Respondents

Mr. Pritesh K. Bohade for the Applicant.
Mr. Rahul D. Motkar for the Respondent.

CORAM : K. K. TATED, J.
DATE : 11th JULY, 2019

P.C.

1. Heard learned Counsels for the parties.

2. By this Civil Application applicant/claimant is seeking permission to withdraw the amount deposited by applicant/Insurance Company to satisfy the judgment and award dated 9th February, 2015 passed by Motor Accident Claims Tribunal, Nashik in M.A.C.P. No.1365/2011.

3. The learned counsel for the applicant submit that in

accident occurred on 13th October, 2011 applicant sustained injury to his head and caused fracture to Patella. He was admitted in hospital at Bhiwandi. Thereafter, he took treatment in another hospital at Nashik and operation was performed. He spent Rs.14,000/- on medical treatment. Therefore, he filed application under Section 166 of Motor Vehicle Act for compensation. He submitted that considering evidence on record the Tribunal awarded only sum of Rs.46,500/- by way of compensation with 9% interest. He submits that because of accident, it is difficult him to do his business. Therefore, he made application for withdrawal of amount. He submits that the First Appeal may take some time for deciding on its own merits. Hence, during the pendency of present First Appeal this Hon'ble Court may please to permit applicant to withdraw the amount deposited by the respondent (Original Appellant)/Insurance Company.

4. On the other hand, the learned counsel appearing on behalf of the respondent Insurance Company vehemently opposed the present Civil Application. He submits that applicant failed to place on record documents for allowing him to withdraw the amount deposited by the Insurance company. He submits that even in the present Civil Application, applicant made incorrect statement that he sustained

disability because of accident. He submits that the trial Court in impugned judgment and award in para No.20 specifically recorded that the applicant (claimant in claim petition) failed to examine any Medical Officer; and place on record any disability certificate. On this ground application filed by the applicant is required to be dismissed.

5. The learned counsel for the respondent (original appellant) submits that before Tribunal they raised the plea, that on the date of accident, the offending vehicle was not insured with the Insurance company. Therefore, the Insurance Company is not liable to pay compensation. Hence, the Civil Application preferred by applicant (claimant) is required to be dismissed with costs.

6. I heard both sides at length. It is to be noted that in the present case, the applicant sustained injuries in accident which occurred on 13th October, 2011. Thereafter, he was admitted in hospital. Considering these facts and as the First Appeal will take time for decision on its own merits, it will be just to allow the applicant to withdraw 50% amount without furnishing any security, subject to outcome of the First Appeal. Hence, the following order -

1) Applicant/(Original respondent) is permitted to withdraw 50% amount with interest without furnishing any security subject to outcome of the First Appeal

2) The Tribunal is directed to invest the remaining amount in Fixed Deposit in any Nationalized Bank initially for one year and same to be continued till further order.

3) Civil Application stands disposed of accordingly.

4) No order as to costs.

[K. K. TATED, J.]

H.R.Shinde