

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 95 OF 2018
IN
FIRST APPEAL (ST) NO. 3722 OF 2015

Office Notes, Office
Memoranda of
Coram,
appearances, Court's
orders or directions
and Registrar's
orders

Court's or Judge's orders.

Mr. Purushottam Chavan for Applicant.
Ms. Varsha Chavan for the Appellant.
Mr. Vishwanath Patil for Respondent
No.2/PMC.

CORAM: K.K.TATED, J.
DATED : 17/10/2019

P.C.

- 1 Heard learned Counsel for the parties.
- 2 By this Civil Application the Applicant original Claimant is seeking to recall the *ex-parte* order dated 10.04.2015 passed by this Court in Civil Application No. 1438 of 2015 and also to allow the Applicant to withdraw the amount deposited by the Insurance Co. to satisfy the judgment and award dated 21.07.2014.
- 3 The learned counsel for the Applicant submits that this Court by order dated 10.04.2015 without issuing any notice, allowed the application filed by the

Insurance Co. for stay of impugned judgment. Hence, the stay order is required to be recalled.

4 It is to be noted that the stay order is passed by this Court after hearing Advocate for the Insurance Co. and considering the fact that execution application filed by the Claimant for recovery of entire amount. Not only that Claimant failed to file caveat in the present matter. Apart from that this court granted liberty to Claimant to file application for withdrawal of amount, if he so desire.

5 Hence, the prayer made by the learned counsel for the Applicant for recalling the order dated 10.04.2015 stands rejected.

6 By this Civil Application, the Applicant is also seeking permission to withdraw the amount deposited by the Insurance Co.

7 The learned counsel for the Applicant submits that in accident which occurred on 19.11.2009 the Applicant sustained injury and Doctor certified 100% loss of earning capacity. He submits that Trial Court after considering the evidence on record held that Claimant is entitled to sum of Rs.20,64,000/- by way of compensation with interest @ 7.5% p.a.

8 The learned counsel for the Applicant

submits that as on today the Applicant Claimant is in hospital. Hence, he requires amount deposited by the Insurance Co. for his medical treatment and other expenses. He submits that if Civil Application is not allowed, irreparable loss will be caused to the Applicant.

9 After taking instructions from father of the Applicant/Claimant, the learned counsel for the Applicant makes a statement that they are ready and willing to withdraw the amount by furnishing solvent surety to the satisfaction of the Trial Court.

10 On the other hand, the learned counsel for the Insurance Co. vehemently opposed the present Civil Application. She submits that in the present proceeding, the Respondent No.2 i.e. Pune Municipal Corporation already deposited 60% of the total compensation with interest and the said amount was withdrawn by the Applicant as corporation has not challenged the impugned judgment and award before this Court. Therefore, there is no question of allowing the Applicant to withdraw the remaining amount. She submits that if the entire amount is withdrawn by the Applicant, then nothing will survive in the present proceeding.

11 I heard both the sides at length. It is to be noted that in the present proceeding the Tribunal held that the Applicant suffered 100% earning disability. Apart from that as on today also he is in hospital. The father of the Claimant made a statement before this Court that they are ready and willing to provide solvent surety for withdrawal of amount.

12 Considering this fact, Claimant can be allowed to withdraw the amount by providing solvent surety to the satisfaction of the Trial Court.

13 Hence, following order is passed:

a) Applicant is permitted to withdraw the amount deposited by the Insurance Co. in Tribunal to the satisfaction of the judgment and award dated 21.07.2014 in MACP No. 1176 of 2009 with accrued interest by providing solvent surety to the satisfaction of the Trial Court on or before 13.12.2019.

b) Civil application stands disposed of accordingly.

c) No order as to costs.

(K.K.TATED, J.)