

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.305 OF 2009

M/s National Insurance Co. Ltd.

-vs-

Dr Sunil Prabhakar Rao Pathak and ors.

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

Court's or Judge's Orders.

Shri D. N. Kukday, Advocate for appellant.
Smt P. M. Chandekar, Advocate for respondent
No.1/applicant.

CORAM : A.S.CHANDURKAR, J.

DATE : July 24, 2019

Civil Application No.1554 of 2019

By this application the respondent No.1 seeks permission to withdraw the amount of compensation that has been deposited by the appellant. In the application that has been sworn by the wife of respondent No.1 it has been stated that the accident in question took place in the year 2000 and thereafter from 2007 to 2018 the respondent No.1 has been undergoing treatment. It is thus prayed that the respondent No.1 be permitted to withdraw an amount of Rs.4,00,000/- through his next friend.

2. The application is opposed by the learned counsel for the appellant on the ground that the application in question has not been sworn by the respondent No.1 but by his wife claiming to be his next friend. Without being so appointed as a next friend such application is not

maintainable. It is further stated that it was necessary for the respondent No.1 to have himself sworn the application in question. As the application has not been moved in the proper form, the same does not deserve consideration.

3. The record indicates that by an earlier order the respondent No.1 was permitted to withdraw an amount of Rs.3,00,000/- with accrued interest in the year 2007 and amount of Rs.4,00,000/- was directed to be invested in Fixed Deposit for a period of three years. By order dated 07/03/2019 by keeping the appeal pending the claimant was permitted to lead additional evidence before the Claims Tribunal to indicate the medical treatment taken. That adjudication is still awaited.

4. The claim for compensation has been filed by the respondent No.1 on account of injuries suffered by him in an accident. In paragraph 4 of the application it is stated that such withdrawal is necessary considering the expenses for the treatment sought to be taken by the respondent No.1. The request is supported by affidavit of the wife of the respondent No.1. Considering the nature of injuries suffered by the respondent No.1 the request made in the application thus has to be considered.

5. Accordingly the respondent No.1 is permitted to withdraw the amount of Rs.2,50,000/- subject to filing an undertaking that in case the appeal is allowed the

amount deposited by the Insurance Company shall be repaid with interest at such rate the Court may direct. Remaining amount shall continue to be invested in Fixed Deposit.

The Civil Application is disposed of.

JUDGE