

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.6722 OF 2020
IN FIRST APPEAL NO.2531 OF 2019**

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**DATTATRAYA @ RAJENDRA EKNATH BHUSARE
VERSUS
THE ORIENTAL INSURANCE COMPANY LTD.AND
ANOTHER**

...

**Mr.S.A.Wakure, Advocate for the applicant-
claimant.**

M.U.S.Malte, Advocate for the respondent no.1

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CORAM : V.L.ACHLIYA,J.

DATE : 01.12.2020

P.C.

1] The applicant-claimant has moved this application seeking withdrawal of amount of Rs.23,21,629/- deposited by the appellant-Insurance Company.

2] Heard learned counsel for the applicant and the advocate representing the appellant-Insurance Company. Perused the judgment and order passed by the Tribunal.

3] In brief, it is the contention of the learned counsel for the appellant-Insurance Company that the judgment and order passed by the Tribunal is not legally

sustainable in law. It is contended that neither any certificate showing permanent disability tendered in evidence, nor any evidence adduced to establish the case of the applicant-claimant that the applicant has sustained permanent disability on account of accidental injuries. It is submitted that findings of 100% disability has been recorded by the Tribunal on assumption and presumption that the evidence in the case has been filed through wife of the applicant-claimant due to disability suffered by claimant.

4] Perusal of judgment and award passed by Tribunal reflects that though witness was examined in the case to prove the injuries sustained by claimants as well as disability cause to claimant but the witness has not deposed anything about permanent disability suffered by claimant. P.W.3 has deposed to extent that claimant remained as indoor patient w.e.f. 03.05.2016 to 30.06.2016.

5] On due consideration of the submissions advanced in the light of challenge raised in Appeal, I am of the view that Appeal deserves due consideration. In the facts and circumstances of the case, I am

inclined to allow the applicant to withdraw the amount to the extent Rs.5,00,000/- [Rs. Five Lac only] subject to outcome of the appeal. Accordingly, the application is partly allowed. The amount of Rs.5,00,000/- [Rs. Five Lac only] be paid to the applicant on furnishing undertaking to the effect that in the event the award is set aside / modified by this Court the applicant shall re-deposit the amount withdrawn within eight [8] weeks from the date of passing of the order. The withdrawal of the amount shall be subject to the final outcome of the Appeal.

6] Civil Application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC