

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4640 OF 2019
IN
FIRST APPEAL NO.1819 OF 2018

RUSTAM KADUBA WAYAL
VERSUS
NEW INDIA ASSURANCE CO. LTD., THR ITS AUTHORIZED
SIGNATORY, AURANGABAD AND ANOTHER

...
Advocate for the applicant: Mr. A.N. Walujkar
Advocate for respondent No.1 : Mr. Deshmukh Mohit R.
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CORAM : V. K. JADHAV, J.
DATED : 4th NOVEMBER, 2020

PER COURT:-

1. Heard both sides.
2. Learned counsel for the respondent-insurer has strongly resisted the application seeking withdrawal of amount on the ground that the certificate of disablement produced before the Commissioner is not in the nature of disability certificate but the same is the concession certificate issued for the purpose of grant of travel concession to the handicapped persons. Learned counsel submits that even the applicant has not examined the Civil Surgeon who has issued the said concession certificate. Learned counsel submits that the Commissioner has considered the said certificate as certificate of permanent disablement to the extent of 45% and held that the applicant has suffered 100% loss of earning capacity. Learned counsel submits that after the judgment delivered by the

Commissioner and during pendency of first appeal the applicant has renewed his licence and thus it cannot be said that the applicant has lost his earning capacity to the extent of 100%.

3. It appears that the employer and employee relationship is not seriously disputed. Even assuming that the learned Commissioner has considered the disablement on the basis of the concession certificate which is not in the form of disability certificate. However, for the purpose of withdrawal of amount, the loss of earning capacity is now considered to the extent of disablement suffered by the applicant as shown in the said certificate. Thus, considering the same, the applicant is permitted to withdraw the amount on certain conditions. Hence, the following order:-

O R D E R

- I. Civil application is partly allowed.
- II. The applicant is permitted to withdraw an amount of Rs.3,00,000/- (Rupees Three lacs only) out of the amount deposited before the Commissioner for WCA, Aurangabad on furnishing undertaking to the satisfaction of learned Commissioner for WCA, Aurangabad.
- III. Civil application is accordingly disposed of.

(V. K. JADHAV, J.)