

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

**911 CIVIL APPLICATION NO.13890 OF 2019
IN FA/4377/2017**

SARITA KARBHARI GAIKWAD

VERSUS

**THE NEW INDIA ASSURANCE CO. LTD., THR ITS
DIVISIONAL MANAGER, LEGAL HUB, AURANGABAD**

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Mr.Shaikh Ashref Patel h/f Mr.A.P. Avhad, Advocate
for applicant.

Mr.A.S. Usmanpurkar, Advocate for respondent no.1.

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CORAM: V.L. ACHLIYA,J.

DATE : 04.02.2020

ORAL ORDER:

The applicant-claimant has moved this application seeking withdrawal of amount deposited by the appellant-insurance company for the reasons set out in detail in the application.

2. Heard learned counsel for applicant-claimant and Advocate representing the respondent no.1 - insurance company. Perused the judgment and award.

3. Learned counsel for the appellant - insurance company opposed the application with contention that the appellant has good

case to succeed in appeal on merit. By referring the overall facts of the case and the reasons and findings recorded by the Tribunal, learned counsel submits that the compensation has been awarded on higher side. It is submitted that the driver of the vehicle in question was not holding the requisite licence to drive the vehicle involved in the accident. He was holding the licence to drive the vehicle without endorsement to drive the transport vehicle. It is submitted that on account of breach of policy condition, the appellant-insurance company ought to have been exonerated by the Tribunal. It is submitted that the applicant-claimant has claimed that he is serving as assistant teacher. The accidental injury has not resulted into loss of employment and affected the future income of the claimant.

4. On due consideration of submissions advanced in the light of injuries sustained by the applicant and challenge raised in the appeal, I am of the view that passing of following order would met the ends of justice:-

ORDER

(i) The applicant is permitted to withdraw the amount to the extent of Rs.4,00,000/- on furnishing the written undertaking that in the event award is set aside or modified, the applicant shall refund the amount within four weeks from the date of passing of order.

(ii) After payment of amount of Rs.4,00,000/- the balance amount be invested in the name of applicant with any Nationalized Bank initially for a period of two years with standing instructions to renew the same till further orders from the Court.

(iii) The order of withdrawal of amount shall be subject to final outcome of the Appeal.

(iv) The Civil Application is disposed of in above terms.

**[V.L. ACHLIYA]
JUDGE**

SGA