

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

**923 CIVIL APPLICATION NO.14204 OF 2019
IN FAST/35774/2019**

BHUSHAN SHESHMAL BHATIYA

VERSUS

THE DIV. MANAGER, THE NEW INDIA ASSURANCE CO. LTD., & ANR

...

Advocate for Applicant : Mr.M.S.Shaikh

Advocate for Respondent No.1 : Mr.M. M. Ambhore

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CORAM : K.K.SONAWANE, J.

DATE: 7th January, 2020

PER COURT:-

1. Heard learned counsel for the applicant and learned counsel for respondent No.1-Insurance Company. Applicant-claimant preferred the present application seeking permission to withdraw the amount of award deposited by respondent No.1-Insurance Company in the proceeding of Application (W.C.) No.20 of 2017, which was pending before the Commissioner for Employees' Compensation and Judge, Second Labour Court, Ahmednagar.
2. According to the applicant, he had preferred the claim petition under Section 4 of the Employees' Compensation Act, 1923, to get compensation for the injury sustained to him in a vehicular accident. The learned Commissioner appreciated the factual aspects and partly allowed the application. Pursuant to the award, respondent No.1-Insurance Company deposited compensation amount with interest accrued thereon to the tune of Rs.17,37,379/-.
3. Applicant moved present application seeking permission to withdraw the compensation amount deposited before the learned Commissioner, Employees' Compensation Act and Judge, Second Labour Court, Ahmednagar.

4. Mr.M.M.Ambhore, learned counsel for respondent No.1-Insurance Company raised objection and contended that the applicant did not prove circumstances of employer-employee relationship between respondent No.2-owner of the vehicle and himself. The learned Commissioner failed to appreciate the factual aspects in proper manner. Applicant was not the employee of respondent No.2 owner of the vehicle, being driver. Respondent No.1-appellant Insurance Company has every hope of success in appeal. In case the applicant-claimant is allowed to withdraw the entire amount, it would cause injustice and prejudice to the Insurance Company and it will create complications for execution of the order, which will be passed in the present appeal.

5. Having given anxious consideration to the arguments advanced on behalf of both the sides, I find that it would justifiable to allow the applicant-claimant for withdrawal of some part of the compensation amount in the interest of justice. Admittedly, the claim petition came to be filed under Section 4 of the Employees' Compensation Act, for the injury sustained to the applicant in a vehicular accident. According to applicant, he was the employee of respondent No.2-Lata Ashok Dhawade owner of the vehicle, whose Maruti Car was involved in the accident. The learned Commissioner considered the factual aspects and rendered the impugned award granting compensation in favour of the applicant-claimant.

6. It is not in dispute that the owner of the vehicle i.e. respondent No.2 did not come forward in the proceeding before the learned Commissioner. Today also this Court has no opportunity to hear the respondent No.2 in the present application. Be that as it may, the absence of respondent No.2 before the learned Commissioner, compelled the learned Commissioner to proceed further in absence of respondent No.2 for grant of compensation in favour of applicant. In such circumstances, I do not find any

impediment to allow the applicant to withdraw lumpsum amount of Rs.10,00,000/- on furnishing undertaking to the effect that in case respondent No.1-Insurance Company succeeded in the proceeding of appeal, he will refund entire amount withdrawn as per the directions of this Court. Accordingly, application deserves to be allowed to that effect.

7. In sequel, the application stands allowed partly. The applicant-claimant is hereby permitted to withdraw lumpsum amount of Rs.10,00,000/- out of total compensation amount of Rs.17,37,379/- deposited on behalf of respondent No.1-Insurance Company before the learned Commissioner, Employees' Compensation Act and Judge, Second Labour Court, Ahmednagar, in Application (W.C.) No.20 of 2017, subject to condition that the applicant shall furnish an undertaking to the satisfaction of appropriate authority of the Labour Court to the effect that, in case any adverse situation arises, if any, after success of appellant in the appeal, the amount received by the applicant-original claimant be refunded forth-with as per order of this Court. Rest of the compensation amount deposited before the learned Commissioner, be kept in Fixed Deposit in any Nationalized Bank or Scheduled Bank for a period of two years and the same may be renewed further as per the directions of this Court.

8. Accordingly, application stands disposed of in the above terms.

(K.K.SONAWANE)
JUDGE