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

946 CIVIL APPLICATION NO.15231 OF 2019
IN FIRST APPEAL NO.3013 OF 2019

GAHININATH KISAN WABLE
VERSUS
TATA AIG GENERAL INSURANCE CO. LTD., PUNE & OTHERS

…
Advocate for Applicant : Mr.Vishnu M. Jaware
Advocate for Respondent no.1 : Mr.S.S.Patil
…

CORAM : V.L.ACHLIYA,J.
DATE : 03.01.2020

P.C.

1] The applicant has moved this application for withdrawal of the amount of Rs.13,94,344/- deposited by the appellant–Insurance Company in terms of the award passed by the Tribunal, pursuant to the interim order passed by this Court.

2] Heard learned counsel for the applicant–original claimant and the Advocate representing respondent no.1–appellant–Insurance Company. Perused the award passed by the Tribunal and the challenge raised in the Appeal.

3] In brief, it is the contention of the learned counsel for the respondent no.1– appellant-Insurance Company that the amount awarded by the Tribunal is too excessive. It is submitted that though the applicant– original claimant has claimed that he was working as Cook; no evidence brought on record to establish the profession as well as income of the applicant. Without any evidence to prove the profession and income of the applicant, the Tribunal has arbitrarily assessed the monthly income of the applicant as Rs.10,000/- and awarded the compensation of Rs.11,67,695/- with interest @ 9% p.a. from date of application till realization. It is further submitted that no evidence produced on record to prove the medical expenses to the tune of Rs.2 lakhs and prospective / future loss of income of Rs.8,10,000/-.

4] On the other hand, learned counsel for the applicant–original claimant submits that while passing award the Tribunal has duly scrutinized the evidence. Only on the basis of evidence adduced in the case passed the award. It is submitted that the applicant has sustained permanent disability to the extent of 45%. He has incurred expenditure to the tune of Rs.4 lacs and requires further expenditure of Rs.3 lacs for taking further treatment.

5] On due consideration of the submissions advanced, I am of the view that appellant – Insurance Company deserves consideration in Appeal. There appears to be no evidence brought on record as regards profession and monthly income of the applicant–claimant. In absence of proof of profession and monthly income, only notional income deserves to be taken into consideration.

6] In view of above, I am of the view that the following order will meet the ends of justice :

ORDER

i] The applicant is permitted to withdraw the amount of Rs.5,00,000/- [Rs. Five Lac only] out of the amount deposited by the Insurance Company.

ii] Out of amount deposited by appellant – Insurance Company, the amount of Rs.5 lakh [Rs. Five Lakh only] be paid to applicant on furnishing undertaking to the Registrar [Judicial] that in the event if the award is set aside / modified by this Court the applicant shall deposit the amount as directed within four weeks from date of such order.

iii] The balance amount be invested in Fixed Deposit initially for a period of two years with any Nationalized Bank with standing instructions to renew the same till further orders.

iv] The interest accrued over the amount invested in Fixed Deposit be paid to the applicant after every three months by transferring the amount in his saving account.

v] Withdrawal of the amount and payment of interest to applicant shall be subject to the final outcome of the Appeal.

vi] Civil Application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC