

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

**CIVIL APPLICATION NO.1360 OF 2021
IN FA/72/2020**

**SANJAY UTTAM RATHOD
VERSUS
UNITED INDIA INSURANCE CO. LTD.,
THROUGH ITS DIVISIONAL MANAGER, BEED AND OTHERS**

Mr.A.D.Hande, Advocate for applicant
Mr.S.S.Dargad, Advocate h/f. Mr.S.G.Chapalgaonkar, Advocate for
respondent no.1
Mr.Vilas Savant, Advocate for respondent nos.2 and 3

**CORAM : R.G. AVACHAT, J.
DATE : MARCH 04, 2021**

PER COURT :-

This is an application for withdrawal of amount of compensation deposited in this Court pursuant to the order of this Court dated 27.09.2019.

2. The applicant had preferred a petition for compensation, being M.A.C.P. No.254 of 2016, on account of injuries/permanent disability suffered in the accident involving motor vehicles. Said petition came to be allowed on 02.05.2019 granting compensation of Rs.3,49,814/- with interest at the rate of 9% per annum from the date of petition till the date of realisation of the amount.

3. Perusal of the impugned award indicates that the applicant was travelling in a truck i.e. goods vehicle. Learned counsel for the respondent – Insurance Company would, therefore, submit that it has no liability to pay the compensation since the risk of a passenger in the goods vehicle has not been covered under the policy of insurance. Learned counsel for the respondent – Insurance Company would further submit that in another claim petition arising out of the same accident, the Tribunal presided over by a different Member, has found it to be a case of contributory negligence in the proportion of 25% - 75% of the truck driver and S.T. bus driver, respectively.

4. Learned counsel for the respondent – Insurance Company may be right in his above submissions. The fact is, however, that it is a claim petition that dates back to year 2016. The applicant suffered injuries and permanent disability in the accident arising out of motor vehicles. It will take time for hearing of the First Appeal. In the fitness of things, it would be just and equitable to allow the application permitting the applicant to withdraw 25% of the amount deposited in this Court.

5. Needless to mention that it was a case of accident involving two motor vehicles namely, a truck bearing registration No.MH-23-4787 and an S.T. bus bearing registration No.MH-20-BL-1100. The Tribunal held the respondents to be jointly and severally liable to pay amount of compensation. As such, if the respondent – Insurance Company is either required to pay any amount in excess of its liability or if it is held to be not liable, on hearing of the First Appeal, whatever would be paid to the applicant may be recoverable from the respondent – M.S.R.T.C., which appears to have not filed appeal against the award.

6. In view of the above, the following order is passed:-

ORDER

(i) The application is partly allowed.

(ii) The applicant is permitted to withdraw 25% of the deposited amount, on furnishing an undertaking to the satisfaction of learned Registrar of this Court.

(iii) Balance 75% amount be invested in Fixed Deposit in any nationalised bank until disposal of the appeal

(iv) Civil Application for withdrawal of amount stand disposed of accordingly.

[R.G. AVACHAT, J.]

KBP