

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

**925 CIVIL APPLICATION NO. 1020 OF 2021
IN FIRST APPEAL ST NO. 27085 OF 2019**

**SYED SAMDANI SYED JEELANI
VS
SHRIRAM GENERAL INSURANCE CO. LTD. THR ITS
AUTHORIZED OFFICER, AURANGABAD AND OTHERS**

Mr. Quadri Taher Ali, Advocate for the applicants
Mr. Vinayak Narayan Upadhye, Advocate for respondent No. 1

CORAM : V. L. ACHLIYA, J.

DATE : 22-01-2021

P. C.

. The applicant/claimant has moved this application seeking withdrawal of amount deposited by the appellant /insurance company.

2. Mr. Upadhye, learned counsel for the appellant opposed the application with contention that the judgment and order passed by the tribunal is perverse and not sustainable in law. It is pointed out that as per the facts pleaded in the claim petition and the documents relied in support of the claim, the applicant was traveling in a jeep which hit the standing truck parked by the side of the road due to mechanical fault. The accident was occurred at about 09.00 pm. The panchanama reflects the width of the tar road as 25 feet with 5 feet kaccha road on both the sides of tar road.

The truck was found to be standing to the edge of the tar road from the mid of tar road. It is submitted that the evidence on record makes out no case to hold the driver of the truck responsible to pay compensation and appellant to be held liable to pay the compensation. It is further pointed out that the applicant has failed to prove that he had sustained permanent disability in the accident. In the judgment it is observed that though the certificate of disability produced on record showing permanent disability to the extent of 30%, but the Medical Officer who issued the certificate not examined by the applicant and the applicant failed to prove the certificate of disability. It is further pointed out that the tribunal has observed in the order that failure to prove the certificate of disability it is to be inferred that the applicant has suffered permanent disability to the extent of 25%. In this background, the learned counsel submits that the judgment and order passed by the tribunal is not sustainable in law and findings are perverse. The appellant has good case to succeed in appeal. In case, the applicant is permitted to withdraw the amount, the very purpose of filing of appeal would be frustrated and it will be difficult to recover the said amount.

3. On the other hand learned counsel for the applicant support the order and submits that the truck was parked on the mid of the road without taking precautionary measures to avoid the accident. In that view the tribunal was justified in apportioning the liability in equal proportion.

4. On due consideration of the submissions advanced in the light of reasons and findings recorded by the tribunal, I am of the view that there is arguable case to be considered in the appeal. It is apparent from the record that the truck was standing on the road at the edge of tar road from the mid of road. There was sufficient space available for the jeep driver to avoid the impact and crossover the truck. In that view, it is necessary to examine whether the tribunal was justified in apportioning the liability in equal proportion. It is surprising to note that the learned judge of the tribunal observed in the judgment that the claimant has not examined the medical officer and failed to prove the disability certificate still held that the applicant has suffered the permanent disability to the extent of 25%. Therefore, the findings recorded by the tribunal to hold that the claimant has suffered permanent disability appears to be perverse and requires consideration in appeal. Therefore, I am of the view that the order in following terms would meet ends of justice.

ORDER

- i. The application is partly allowed.
- ii. The applicant is permitted to withdraw the amount to the extent of 25% of amount deposited on furnishing undertaking to the satisfaction of the

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Registrar (Judicial) that in the event the award is set aside or modified, the applicant shall re-deposit the amount within eight weeks from the date of passing of such order.

iii. Withdrawal of amount shall be subject to final outcome of appeal.

[V. L. ACHLIYA, J.]

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