

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

**18 CIVIL APPLICATION NO.6906 OF 2020
IN FA/4469/2017**

**DILAVAR NOORALI KANANI AND ANOTHER
VERSUS
THE ORIENTAL INSURANCE CO. LTD. THR ITS DIV. MANAGER**

Mr. Amit S. Deshpande, Advocate for the applicants
Mr. D. P. Deshpande, Advocate for respondent No. 1
Mr. D. S. Kulkarni, Advocate for respondent No. 2

CORAM : V. L. ACHLIYA, J.

DATE : 18-01-2021

P. C.

. The applicant/claimant [respondent No.1 in appeal] has preferred this application for withdrawal of amount deposited in W.C. No. 99 of 2013 decided vide judgment and order dated 22-04-2015 passed by the Commissioner for Employee's Workmens Compensation, Ahmednagar.

2. Heard learned counsel for the applicant/claimant and counsel representing the appellant/insurance company as well as the respondent No. 2-owner of the vehicle.

3. Mr. Dhananjay Deshpande, learned counsel for the appellant/insurance company opposed application with contention that the appellant/ insurance company has good case to succeed in

appeal. By referring to overall facts of the case the learned counsel submits that it has been brought on record that the claimant has got renewed his driving license after the accident. Prior to accident, the claimant was holding license to drive heavy motorcycle. Post accident the claimant has got renewed said license to drive the light motorcycle. In this background learned counsel submits that the renewal of license itself sufficient to draw inference that no permanent disability caused to claimant, so as to make him unfit to drive the vehicle and to earn the income. In that view the judgment and order passed by the Commissioner for Employee's Workmens Compensation to award the compensation of Rs. 5,63,292/- is not sustainable in law.

4. On the other hand, learned counsel for the claimant support the award passed by the Commissioner for Employee's Workmens Compensation. It is submitted that in the accident both the legs of the applicant were fractured. He was required to walk with the help of crutches. There is evidence to effect that there was malunification of bones which completely affected the functional disability of applicant to drive the vehicle as a driver. In the background the learned counsel submits that permanent disability caused to the claimant and the Commissioner For Employee's Workmens Compensation has passed reasoned order.

5. On due consideration of the submissions advanced and the findings recorded by the Commissioner For Employee's

Workmens Compensation, I am of the view that there is arguable case to be considered in appeal. Considering the nature of injury and percentage of disability suffered by injured to the extent of 25% as observed by the tribunal, I am of the view that the applicant deserves to be allowed to partially withdraw the amount to the extent of Rs. 2,00,000/-. Hence, the following order:-

ORDER

- i. The application is partly allowed.
- ii. Out of amount of Rs. 5,63,292/- [Rupees Five Lakhs Sixty Three Thousand Two Hundred and Ninety Two] deposited with the Commissioner for Employee's Workmens Compensation by the appellant, the applicant is permitted to withdraw the amount of Rs. 2,00,000/- [Rupees Two Lakhs] on furnishing undertaking to the effect that in the event the judgment and order is set aside or modified, the applicant shall re-deposit the amount within eight weeks from the date of passing of such order.
- iii. Undertaking to be furnished before the Commissioner for Employees Workmens Compensation. On furnishing undertaking the Commissioner for Employees Workmens Compensation is directed to pay the amount to the extent of Rs. 2,00,000/- by

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transferring the amount in his savings bank account.

iv. After making the payment of Rs.2,00,000/-, the balance amount be invested in the fixed deposit initially for a period of two years with standing instructions to re-invest the amount in fixed deposit till disposal of appeal.

v. The application is disposed of.

[V. L. ACHLIYA, J.]

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