

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

**909 CIVIL APPLICATION NO.12005 OF 2019
IN FAST/10178/2019**

**DADARAO RAMBHAU GAIKWAD
VERSUS
HDFC ERGO GENERAL INSURANCE CO. LTD., THE
DIVISIONAL MANAGER AND ORS**

Mr. Avinash D. Aghav, Advocate for the applicant
Mr. S. G. Chapalgaonkar, Advocate for respondent No.2

CORAM : N. J. JAMADAR, J.

DATE : 03-03-2021

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. Heard learned counsel for the applicant and learned counsel for the respondent No.2.

2. This application is preferred seeking permission to withdraw the amount of Rs.7,11,061/- deposited by the respondent No.1 in terms of the judgment and award of the learned Member of the MACT, Ahmednagar in MACP No. 408/2013.

3. Learned counsel for the respondent No.2 resisted the prayer on the ground that the learned tribunal has invoked the principle of "pay and recover" unjustifiably. Notice issued to insured is served. Yet, none appears for the insured-respondent No.1. Therefore, if the entire amount is allowed to be withdrawn,

Respondent No.1 would suffer prejudice.

4. The tribunal had directed that the amount of Rs.1,50,000/- each be kept in fixed deposit in the name of claimant No.1-Dadarao Gaikwad, applicant herein, and Vandana Gaikwad his wife. Learned counsel for the applicant submits that Vandana has since expired.

5. In the circumstances, the order permitting withdrawal of amount except the sum of Rs. 3,00,000/- (which is to be kept in fixed deposit in the name of applicant-Dadarao Gaikwad) would meet ends of justice. Hence, the following order.

ORDER

- i. The application stands partly allowed.
- ii. The applicant is entitled to withdraw the amount deposited by the respondent No.1-insurer alongwith interest accrued thereon, excluding the sum of Rs.3,00,000/- which shall be kept in fixed deposit in the name of applicant Dadarao Gaikwad, on furnishing an undertaking to the satisfaction of the learned Registrar (Judicial) of this court.

[N. J. JAMADAR, J.]