

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 3029 OF 2021
IN
FIRST APPEAL (ST) NO. 3410 OF 2019**

SANTOSH
SUBHASH
KULKARNI

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SANTOSH SUBHASH
KULKARNI
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Ananda Shamrao Patil	...Applicant
In the matter between	
Reliance General Insurance Co. Ltd.	...Appellant
Versus	
Ananda Shamrao Patil & anr.	...Respondents

Mr. Mr. Bhavesh Magam, h/f Mr. Kedar Lad, for the Applicant
in IA.

Ms. Shalini Shankar, for the Respondent in IA./Appellant in
FA.

CORAM: N. J. JAMADAR, J.

DATED : 25th OCTOBER, 2021

PC:-

1. Heard Mr. Magam, the learned Counsel for the applicant
and Ms. Shankar, the learned Counsel for the respondents –
appellants – insurer.

2. This application is preferred seeking permission to
withdraw the amount of compensation deposited by the
appellant – insurer in terms of the Award in MACP No.174/2010,
dated 9th January, 2018, passed by the learned Chariman,
MACT, Kolhapur.

3. The learned Counsel for appellant – insurer resisted the
prayer of the applicant to withdraw the amount of compensation

on the ground that the appellant – insurer is not at all liable to satisfy the Award as the vehicle in question was not insured with the appellant – insurer and the claim is based on a fake insurance policy. The learned Counsel further submitted that the learned Chairman, MACT, Kolhapur, committed an error in not properly appreciating the ground of fake policy raised by the appellant – insurer, and erroneously fastened the liability on the appellant – insurer.

4. From the perusal of the impugned judgment, especially the observations in paragraphs 9 to 13 of the judgment, it becomes evident that the Chairman, MACT, has ascribed adequate reasons to hold that the vehicle was insured with the appellant. In any event, the said ground can be legitimately adjudicated at the stage of final hearing and disposal of the appeal. At this juncture, the applicant cannot be deprived of the benefit of the amount of compensation, totally. It would therefore be expedient in the interest of justice to allow the applicant to withdraw a portion of the amount of compensation deposited by the appellant – insurer subject to furnishing an undertaking to bring back the said amount, in the event the appeal is allowed and it is held that the applicant is not entitled to compensation.

5. Hence the following order:

: O r d e r :

- (i) The application stands partly allowed.
- (ii) The applicant is entitled to withdraw 50% of the amount of the compensation deposited by the appellant – insurer alongwith interest accrued thereon, subject to furnishing an undertaking before the learned Chairman, MACT, Kolhapur, to bring back the said amount alongwith interest at such rate as may be directed by the Court, in the event the appeal is allowed and it is held that the applicant is not entitled to compensation.
- (iii) The application stands disposed of.

[N. J. JAMADAR, J.]