

Santosh

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

**CIVIL APPLICATION NO. 1911 OF 2019
IN
FIRST APPEAL NO. 1220 OF 2019**

SANTOSH
SUBHASH
KULKARNI

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Date: 2021.10.12
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Nagesh Suresh Garud

...Applicant

In the matter between

The IFFCO TOKIO General Insurance Co.
Ltd.

...Appellant

Versus

Nagesh Suresh Garud

...Respondent

Ms. Roma Naik, a/w Gargi Maideo, h/f Mr. Vikrant
Parshurami, for Applicant/Respondent.

Ms. Rina Kundu, for the Respondent no.1/Appellant.

CORAM: N. J. JAMADAR, J.

DATED : 11th OCTOBER, 2021

PC:-

1. 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.213/2014, dated 15th March, 2018, passed by the learned Member, MACT, Thane.

2. Heard Ms. Naik, the learned Counsel for the applicant and Mr. Kundu, the learned Counsel for respondent no.1 – insurer.

3. The learned Counsel for respondent no.1 resisted the prayer of the applicant to withdraw the amount of compensation on the ground that the deceased cannot said to be a third party

as the accident occurred due to the negligence on the part of the brother of the deceased (original opponent no.2), who was driving motorcycle bearing MH-04/EW-6427, on which the deceased was pillion rider.

4. The grounds raised by the appellant – insurer assailing the legality, propriety and correctness of the impugned Award can be legitimately considered at the stage of adjudication of the appeal. At this stage, in the backdrop of the reasons assigned in the application, the claim of the applicant that he requires the amount to meet the necessities of life, cannot be said to be unreasonable. 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.

5. Hence the following order:

: O r d e r :

- (i) The application stands 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 Member, MACT, to bring back the said

amount alongwith interest at such rate as may be decided 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.]