

Santosh

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

**INTERIM APPLICATION NO. 3026 OF 2021
IN
FIRST APPEAL NO. 1339 OF 2019**

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2021.10.27
11:07:23 +0530

Irfan Hasan Gulam

...Applicant

In the matter between

Bombay Electric Supply & Transport Undt.
& anr.

...Appellants

Versus

Irfan Hasan Gulam & anr.

...Respondents

Mr. Arsh Misra, i/b MV Kini & Co., for the Appellant.

Mr. Abhijit Desai, for the Applicant in IA/Respondent in FA.

CORAM: N. J. JAMADAR, J.

DATED : 25th OCTOBER, 2021

PC:-

1. Heard Mr. Desai, the learned Counsel for the applicant and Mr. Misra 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 Application No.2682/2008, dated 4th April, 2016, passed by the learned Member, MACT, Mumbai. The applicant claims to have suffered 60% permanent partial disability in the vehicular accident. There are averments in the application in justification of the prayer for withdrawal.

3. 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.

4. The learned Counsel for respondent - appellant resisted the prayer of the applicant to withdraw the amount of compensation on the ground that the appellant would suffer prejudice in the event the applicant is allowed to withdraw the amount of compensation and the appeal is allowed. It was further submitted that there are substantial ground of challenge to the impugned Award.

5. 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. 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.

6. Hence the following order:

: O r d e r :

- (i) The application stands partly allowed.

- (ii) The applicant is entitled to withdraw 70% 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.]