

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

**INTERIM APPLICATION NO. 2701 OF 2021
IN
FIRST APPEAL NO. 288 OF 2020**

Ameya Abhay Kulkarni

...Applicant

In the matter between

Reliance General Insurance Co.Ltd.

...Appellant

vs.

Ameya Abhay Kulkarni & Anr.

...Respondents

Mr.Ajit S. Hodare for Applicant .

Mr.Pandit Kasar for Appellant.

CORAM : BHARATI DANGRE, J.

DATED : 5 OCTOBER 2021

P.C. :

. The claimant, Respondent No.1, moved an application under Section 166 of the Motor Vehicles Act for award of compensation on account of grievous injuries and permanent disablement suffered in motor vehicle accident which took place on 3 October 2015 when he was riding a motorcycle and another motorcycle driven by Respondent No.2 hit him. He alleged that the vehicle driven by Respondent No.2 was in high speed and on account of rash and negligent driving, he sustained an injury. Respondent No.1 was an indoor patient from 3.10.2015 till 18.10.2015 and was operated for left femur fracture and knee grafting. His claim was based on the expenses incurred by him in his medical treatment and the MACT, Thane by an order and award dated 7 October 2019 directed

Respondent Nos.1 and 2 to jointly and severally pay a sum of Rs.16,49,000/- with interest.

2. The insurance company has instituted the present appeal and under the directions of this court has deposited the amount of compensation in the MACT which is calculated at Rs.22,24,768/-.

By the Interim Application No.2701/2021, Respondent No.1 seek withdrawal of the said amount in the wake of the injuries and the disabilities sustained by him. The submission advanced is to the effect that though the MACT compensated him on 7 October 2019, till date he has not received the amount which he is in dire need of, on account of the disability incurred by him.

3. Counsel for the Appellant oppose the said interim application on the ground that the Appellant has a point of law in his favour, which he would argue at the stage of final hearing. The objection, which was raised before the MACT on behalf of Insurance company, was that the claimant was not wearing a helmet and was not in possession of a valid driving licence. When the judgment of the learned Tribunal is perused, the Tribunal has taken into consideration the latest decision of the Apex Court in relation of the statutory right of a third party to recover the amount of compensation so awarded to the injured. Reference is made to to decision of the Apex Court in **Shamanna vs. Divisional Manager, Oriental Insurance Co.Ltd.**¹ wherein the principle of 'pay and recover' has been elaborated. The compensation awarded, *prima facie*, is based on the factum of just, equitable and fairness. The Tribunal has also adverted to the claim by taking into account the hospital charges and the loss of income during the

1 2018 ACJ 2163

period of treatment. The doctor, who has treated Respondent No.2, also stepped into the witness box and deposed that the claimant had sustained disability to the extent of 40% of the whole body and is unable to carry out his daily pursuit and not only this, it is certified that the claimant will not be in a position to drive a vehicle.

Considering the aforesaid facts, which were taken into consideration while awarding the compensation, the statement of the Applicant in the interim application that he is in dire need of the amount of compensation to meet his daily expenditure and he is also required to remit the expenses of his hospital for treatment, I deem it appropriate to grant the application and permit the Applicant to withdraw the amount of compensation deposited by the Appellant in MACP No.563/2016. It is made clear that in terms of the judgment and award of the Tribunal, an amount of Rs.7 lakhs is directed to be invested in the Fixed Deposit. Necessarily, the withdrawal of the amount shall be to the exclusion of Rs.7 lakhs which the Tribunal shall invest in Fixed Deposit in terms of its order and award dated 7 October 2019. The remaining amount is permitted to be withdrawn by the Applicant subject to the stipulation that he shall submit a Personal Bond to the effect that if the appeal is decided against him, he shall be liable for refund of the said amount.

Subject to the above stipulation, Interim Application No. 2701/2021 is allowed in terms of prayer clause (a).

(SMT. BHARATI DANGRE, J.)