

Santosh

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

**INTERIM APPLICATION NO. 2919 OF 2021
IN
FIRST APPEAL (ST) NO. 25759 OF 2019**

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Date: 2021.10.21
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Mr. Jagadish Kalathrakal Maroli

...Applicant

Versus

M/s. Hindustan Petroleum Corporation Ltd.
& ors.

...Respondents

Ms. Rina Kundu, for the Applicant/ori. Respondent no.1 in
FA.

Mr. V. M. Parkar, for the Appellant/Respondent no.1 in IA.

CORAM: N. J. JAMADAR, J.

DATED : 14th OCTOBER, 2021

PC:-

1. This is an application for withdrawal of the amount of compensation deposited by the appellant – original opponent no.2, in terms of the Award, in MACP No.303 of 2006, dated 5th January, 2019, passed by the learned Member, MACT, Thane. The applicant has made averments in the application in justification of the prayer for withdrawal of the amount.
2. The applicant has also averred that the appellant – original opponent no.2 has not deposited the entire amount in terms of the Award and there is a shortfall.
3. The learned Counsel for the appellant resisted the prayer for withdrawal.

4. The claim of the applicant that there is a shortfall in depositing of the amount, in terms of the Award, was also contested.

5. The appellant is at liberty to file an affidavit to deal with the contentions of shortfall in deposit as it revolves around the factual aspect and accurate computation.

6. So far as the prayer for withdrawal, the learned Counsel strenuously submitted that in the peculiar facts of the case the applicant may not be permitted to withdraw the amount of compensation deposited by the appellant as the very liability of the appellant as the owner of the offending vehicle is in question. Since the offending vehicle was sold in public auction, the appellant could not have been held to be the owner of the vehicle on the date of the accident, for the failure on the part of the auction purchaser to get the vehicle registered in his name. Thus, no liability could have been fastened on the appellant. In the circumstances, according to the learned Counsel for the appellant, the appellant has a strong case on merits and a fair chance of success in the appeal. In the event, the applicant is allowed to withdraw the amount of compensation and, eventually, the appeal is allowed, the appellant will suffer prejudice.

7. In opposition to this, the learned Counsel for the applicant would urge that the applicant requires the amount to sustain himself.

8. From the perusal of the impugned judgment and award, it becomes evident that the accident occurred on 29th December, 2005. Claim petition was filed in the year 2006 and it was decided on 5th November, 2019. The applicant appears to be in his sixties. The claim of the applicant that he requires the amount of compensation to meet the necessities of life cannot be said to be unreasonable.

9. The grounds in support of the appeal, forcefully urged by the learned Counsel for the appellant, can be legitimately considered at the stage of final hearing and determination of the appeal. In the intervening period, the applicant cannot be deprived of the benefit of the compensation, totally. The concern of the appellant can be addressed by allowing the applicant to withdraw a portion of the amount of compensation subject to furnishing an undertaking to bring back the amount, in the event the appeal is allowed.

10. Hence, the following order:

: O r d e r :

- (i) The application stands partly allowed.

- (ii) The applicant is permitted to withdraw 50% of the amount of compensation deposited by the appellant – original opponent no.2, before the Tribunal, alongwith interest accrued thereon, subject to furnishing an undertaking before the Tribunal 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.
- (iv) The appellant may file affidavit to address the contention of the shortfall in deposit within a period of four weeks, with an advance copy to the applicant.

[N. J. JAMADAR, J.]