IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2219 OF 2021

IN

FIRST APPEAL (ST) NO.27786 OF 2016

Santosh Vijay Tawde and Ors. .. Applicants

Versus

The Oriental Insurance Co.Ltd.
Through its Motor Third Party
Claims Hub & Ors. .. Respondents

...

Mr.Amol Gatne i/b Ms.Swati U. Mehta for the Applicant.

Mr.Sanjay Krishnan i/b Legal Consultant for the Appellant/Respondent No.1.

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CORAM: BHARATI DANGRE, J.
DATED : 27th OCTOBER, 2021

<u>P.C</u>:-

1. Heard learned counsel for the Applicant and the learned counsel for Respondent No.1.

2. By the present application, the Applicant seeks withdrawal of the balance amount, which has been deposited by the Insurance Company, in terms of the order passed by the MACT, Mumbai on 19/06/2013 in MACP No.807 of 2006. In furtherance of the said direction, an amount of Rs.13,66,526/- has been deposited on 14/05/2019 and, out of which, an

amount of Rs.6,83,263/- was made over to the Claimant by RTGS and the remaining amount was kept in the Fixed Deposit.

Pertinent to note that, while granting the claim of the Claimant against Respondent Nos.1 and 2, who were held jointly and severally liable to pay the compensation, the Tribunal had directed that on realization of the amount, from the total amount of compensation, 40% amount shall be paid to the Applicant by Account Payee cheque, on completing the necessary formalities and 60% was directed to be invested in his name, in FDR, for a period of five years, subject to a further renewal.

3. In-spite of receipt of amount in terms of the directions of the Tribunal to the tune of Rs.6,83,263/, learned counsel for the Applicant states that he is constrained to move the application for withdrawal of the remaining amount on account of further developments, which are highlighted in the application. It is stated that the Applicant has been assessed with 85% permanent disability and since last years, the Applicant is required to undergo the process of dialysis, which undisputedly is a costly affair. The dialysis has to be undergone twice a week and it requires huge amount, which the Applicant is unable to arrange as now, he is without any source of income. If the remaining amount is not permitted to be withdrawn, he will have to stop the dialysis, which would prove fatal. Learned counsel for the Applicant has supported the application alongwith the photographs on record, which cannot be disputed and are not disputed by the Insurance Company.

4. In the wake of the submissions advanced, which are supported by the affidavit on record, in the interest of justice and to ensure that the dialysis of the Applicant continue and do not get interrupted on account of financial constraints, I am of the considered opinion that the Applicant shall be permitted to withdraw Rs.5,00,000/- from the remaining amount, which has been deposited by the Insurance Company and which has been deposited in the Fixed Deposit. After allowing withdrawal of Rs.5,00,000/-, the reaming amount shall be kept invested in the Fixed Deposit and on an exigency being expressed, it can be permitted to be withdrawn at the later point of time.

With the aforesaid direction, application is partly allowed. If the Fixed Deposit is required to be encashed, it may be allowed to do so and after making over an amount of Rs.5,00,000/-, the remaining amount shall be invested in the Fixed Deposit in the same bank .

5. The Application stands disposed of accordingly.

(SMT. BHARATI DANGRE, J.)