

Santosh

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

**INTERIM APPLICATION NO. 2685 OF 2021
IN
FIRST APPEAL NO. 527 OF 2021**

Digambar H. Malode & anr. ...Applicants
In the matter between
The New India Insurance Co. Ltd. ...Appellant
Versus
Digambar H. Malode & anr. ...Respondents

**SANTOSH
SUBHASH
KULKARNI**

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SANTOSH SUBHASH
KULKARNI
Date: 2021.12.17
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Mr. Pritesh Bohade, for the Applicants/Respondents in FA.
Mr. Rajesh Kanojia, i/b Res Juris, for the Respondent in IA/
Appellant.

CORAM: N. J. JAMADAR, J.

DATED : 17th DECEMBER, 2021

PC:-

1. Heard Mr. Bohade, the learned Counsel for the applicant and Mr. Kanojia, the learned Counsel for the respondent – appellant – 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 MACP No.461/2015, dated 13th December, 2019, passed by the learned Member, MACT, Nashik.
3. The learned Counsel for the appellant – insurer resisted the prayer of the applicant to withdraw the amount of

compensation on the ground that there was no subsisting contract of insurance in as much as on account of dishonour of the cheque issued towards premium, the appellant – insurer communicated the cancellation of the policy. The Tribunal committed grave error in discarding the documentary evidence placed on record to substantiate the said defence. Therefore, if the applicant is permitted to withdraw the compensation and eventually the appeal is allowed, insurer would be left in the lurch.

4. Indeed, the aforesaid issue warrants consideration. However, in the meanwhile, the applicant can be permitted to withdraw a portion of the amount of compensation subject to furnishing an undertaking to bring back the said amount in the event the order adverse to the interest of the applicant – original claimant is passed.

5. Hence the following order:

: O r d e r :

- (i) The application stands partly allowed.
- (ii) The applicant is entitled to withdraw 50% of the amount of the compensation deposited by the appellant – insurer along with interest accrued thereon, subject to furnishing an undertaking before the learned Member, MACT, Nashik, to bring back

the said amount along with interest at such rate as may be decided by this 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.]