

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

CIVIL APPLICATION NO.1165 OF 2019

IN

FIRST APPEAL NO.558 OF 2017

Sandeep Anand Awadh Kishore Prasad].. Applicant.

IN THE MATTER BETWEEN:

The New India Assurance Co.Ltd.].. Appellant.

Vs.

Sandeep Anand Awadh Kishore Prasad & Anr.].. Respondents.

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Ms Amrin Khan i/b Mr.Avinash M.Gokhale, for applicant in C.A. no.1165/2019 and for respondent no.1 in F.A.no.558/2017.

Mr. D.S.Joshi, for respondents in CA no.1165/2019 and for appellant in F.A. no.558/2017.

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 17TH FEBRUARY 2021.

P.C. :

1. This is an application for withdrawal of entire amount of an award granted by the Tribunal. It is submitted that the applicant, who was aged about 27 years at the time of accident, suffered injury to his left eye. He has to maintain the artificial eye which is required to be changed every 4-5 years. The applicant has also suffered neurological disability including memory loss. He is required to take medicines regularly for prevention of fainting. For all these reasons, he is unable

to continue with his job. He is required to spend huge amount on treatment, medicines and nutritional diet and conveyance. Cost of medical treatment and medications is increasing day by day.

2. Mr.D.S.Joshi, the learned Counsel for the appellant, however, strongly objects withdrawal of amount of compensation by stating that, there was breach of policy condition, in a sense that, the applicant was riding a motor bike without helmet. He can also be held responsible for the injury suffered by him. Apart from that, Mr. Joshi has invited my attention to Section 53 of the 'Employees' State Insurance Act' by which there is a bar against receiving compensation or damages under any other law.

3. I have considered the submissions. In so far as, bar created under Section 53 of the 'Employees' State Insurance Act' is concerned, it will not operate, for the reason that the legislator has, in the said Section provided that injury sustained should be in respect of employment. Here is the case wherein, there is no question of applicant having sustained the injury during the course of his employment.

4. Having considered the grounds raised in the application for withdrawal of compensation amount, at this stage, in the interest of justice, the applicant is permitted to withdraw 50% of the amount with accrued interest.

5. At the time of withdrawal of the amount, the applicant shall give an Undertaking that in case the appeal succeeds, he will refund the

entire amount with interest as will be determined by this Court while deciding the appeal finally.

6. After withdrawal of amount, the balance amount shall be invested in a Fixed Deposit in any Nationalized Bank for a period of one year and thereafter for one more year, after obtaining order from this Court.

7. The application is disposed of.

(PRITHVIRAJ K.CHAVAN,J.)