

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3288 OF 2021
IN
FIRST APPEAL NO.1371 OF 2013

Nallathambi Vedakanan Nadar ...Applicant

IN THE MATTER OF :-

The New Indian Assurance Co. Ltd. ...Appellant

vs.

Nallathambi Vedakanan Nadar & Ors. ...Respondents

Mr. T. J. Mendon, for the Applicant in Interim Application.

Mr. Devendranath S. Joshi, for the Respondent in IA/Original
Appellant in FA.

CORAM : N. J. JAMADAR, J.

DATE : 16th NOVEMBER, 2021

P.C.:

1. Heard the learned counsel for the applicant-original claimant and the learned counsel for the respondent No.1-/appellant-insurer .

2. This application is preferred for withdrawal of the amount deposited by the appellant-insurer in terms of the impugned Judgment and award dated 17th October, 2012 passed by the learned Member, M.A.C.T. Mumbai.

3. Mr. Joshi, the learned counsel for the appellant-insurer resisted the prayer on the ground that, the defence of the appellant

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is that of no subsisting contract of insurance.

4. Mr. Mendon, the learned counsel for the applicant-claimant joined the issue by inviting the attention of the Court to the observations of the learned Member in Para No.13 of the impugned Judgment, wherein, the learned Member has recorded that, there is prima facie evidence to believe that the auto-rickshaw involved in the accident was duly insured with the appellant-insurer.

5. The defence raised by the appellant-insurer can be legitimately considered at the time of final hearing of this appeal. In the meanwhile, the applicant-claimant can be permitted to withdraw a portion of the amount of compensation. Hence, following order :

ORDER

- i) The application stands partly allowed.
- ii] The applicant-claimant is permitted to withdraw 50% of the compensation deposited by the appellant/insurer along with interest accrued thereon till date, subject to furnishing an undertaking before the tribunal to bring back the amount at such rate of interest as this Court may decide in the event the appeal is allowed and it is held that the appellant/insurer is not

liable to pay the compensation.

iii) Interim Application stands disposed of.

(N. J. JAMADAR, J.)