

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 4080 OF 2021
(FOR WITHDRAWAL)

IN

FIRST APPEAL (ST.) NO. 29070 OF 2015

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Shri Madhukar Hiraji Thakur ...Applicant

In the matter between :

Oriental Insurance Co. Ltd. ... Appellant

vs.

1. Madhukar Hiraji Thakur
& Anr. ...Respondents

Mr.Devendranath S. Joshi for appellant.

Mr.T.J. Mendon for applicant/respondent No.1.

CORAM : N. J. JAMADAR, J.

DATE : 17th DECEMBER, 2021

P.C.:

1. Heard the learned counsel for the applicant-original claimant and the learned counsel for the appellant-insurer.

2. Mr. Joshi, the learned counsel for the appellant-insurer resisted the prayer for withdrawal on the ground that the tribunal has awarded compensation in breach of the mandate contained in the provisions of section 163-A Motor Vehicles Act, 1988. Issue of failure to prove income has also not been properly appreciated.

3. The aforesaid ground can be considered legitimately at the time of final hearing of the appeal. In the backdrop of the fact that the accident occurred on 13th November 2002 and indisputable position that, till date, the applicant has not received any amount of compensation, it would be expedient to allow the applicant to withdraw 50% of the amount of compensation.

4. The applicant is allowed to withdraw 50% amount of compensation deposited by the appellant-insurer alongwith the interest accrued thereon, subject to furnishing an undertaking before the tribunal that he will bring back the said amount alongwith interest at such rate as may be decided by this Court, in case the appeal is allowed and it is held that the applicant is not entitled to the compensation.

5. The application stands disposed of.

(N. J. JAMADAR, J.)