Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.4223 OF 2019

IN

FIRST APPEAL NO.190 OF 2020

Kokila Surender Jhingan	**]**	**Applicant**
Vs.		
National Insurance Co. Ltd. and others.	**]**	**Respondents**

.....

Mr. S.S. Vidyarthi i/b Ruchika Dave, for Applicant.

Mr. Amol Gatne, for Respondent No.1-Insurer.

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 25th MARCH, 2021.

P.C.

1. This is an application seeking withdrawal of the entire amount of compensation awarded by learned Member, M.A.C.T, Mumbai vide judgment and award dated 14th March, 2018 passed in M.A.C.P. No.625 of 2010.

2. Heard Mr. Vidyarthi, learned Counsel for the applicant.

3. Justifying the withdrawal of the entire amount of compensation, Mr. Vidyarthi has pressed into service following case laws;

[1] National Insurance Company Limited Vs. Rekhaben and others, (2017) 13 Supreme Court Cases 547;

[2] United India Insurance Co. Ltd. Vs. Sugra Riyaz Varawalla and others and

[3] Rukmani D+evi and others Vs. Om Prakash and others, 1991.

4. Mr. Gatne, learned Counsel for the respondent-insurer, however, submits that even though the appeal is only on the ground of quantum, he has a good case on merits and, therefore, objects for withdrawal of the amount of compensation.

5. Having considered the reasons stated in the application and objection raised by learned Counsel for the respondent, at this stage, the applicant is permitted to withdraw 70% of the amount of compensation with accrued interest, upon furnishing an undertaking at the time of withdrawing the amount of compensation before the Tribunal that if the respondent-insurer succeeds in the appeal, she will refund the amount with interest at such rate as would be directed by this Court depending upon the outcome of the first appeal.

6. If the applicant does not file an undertaking at the time of withdrawing the amount of compensation, the amount deposited by the respondent-insurer shall be invested by the M.A.C.T in the fixed deposit of a Nationalized Bank for a period of one year and

thereafter for one more year again after obtaining an order from this Court.

7. If 70% amount is withdrawn by the applicants, balance amount shall be invested by the M.A.C.T in a fixed deposit as stated above, in a Nationalized Bank.

8. The application stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]