

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

922 CIVIL APPLICATION NO.1451 OF 2022
IN FA/2687/2021 WITH CA/12196/2021 IN FA/2687/2021

FEROZ MIYANSAB PATHAN
VERSUS
UNITED INDIA INSURANCE CO. LTD., THR ITS ADMINISTRATIVE OFFICER (TP
HUB) AURANGABAD AND ORS

Mr F.K. Patel, Advocate for applicant
Mr S.S. Rathi, Advocate for respondent no.1

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 11th March, 2022

PER COURT :

1. It is an application for withdrawal of amount moved by the claimants.
2. Heard Mr F.K. Patel learned Advocate for applicant and Mr S.S. Rathi, learned Advocate for respondent no.1/Insurance Company.
3. On perusing the judgment passed in M.A.C.P.No.121/2018, it is revealed that the tribunal was pleased to award compensation of Rs.21,40,129/- with interest @ 7% per annum from the date of claim petition till its realisation to the applicant/claimant. It is an injury claim.
4. Mr Patel, learned Advocate for the applicant/original claimant submitted that though the original claimant has sustained 55% permanent disability, he has been removed from the service. He is in need of money and he urged to allow 100% withdrawal of compensation amount.
5. Per contra, Mr S.S. Rathi, learned Advocate for respondent no.1/Insurance Company strongly opposed to allow this application. He submitted that though the appeal has been preferred to the extent of quantum of compensation calculated by the tribunal, the Company would also raise the issue of

contributory negligence at the time of final hearing of the appeal. He further submitted that the ground of contributory negligence is also taken in the grounds of appeal while filing the appeal. He also invited my attention to paragraph 21 of the impugned judgment. He submitted that the claimant was not working as a teacher, but he was working as Lab Assistant.

6. It is an injury claim. The Insurance Company has challenged the impugned judgment and award on various grounds including raising plea of contributory negligence by way of appeal. The tribunal seems to have considered the pleadings of both sides and evidence on record and accordingly assessed the compensation in paragraph 28, which comes to Rs.21,40,129-.

7. Having considered the submissions of learned Advocates for both the sides, at this stage, I am convinced to allow the original claimant to withdraw 50% amount of compensation on furnishing usual undertaking which would take care of defence of the appellant/Insurance Company.

ORDER

(i) The Civil Application is hereby partly allowed.

(ii) The applicant/original claimant is hereby permitted to withdraw 50% of the amount of compensation deposited by the appellant/Insurance Company in this Court, on furnishing usual undertaking to the satisfaction of Registrar (Judicial) of this Court.

(iii) The Civil Application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)