

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

909 CIVIL APPLICATION NO.2322 OF 2022
IN FA/105/2022

SHIVAJI @ SHIVRAJ SAHEBRAO WADIKAR
VERSUS
MANIK BHAGVAT PHAD AND ANR

Mr M.D. Shinde, Advocate for applicant
Mr M.R. Deshmukh, Advocate for respondent no.2
Mr S.B. Madde, Advocate for respondent no.1 - absent

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 18th February, 2022

PER COURT :

1. It is an application for withdrawal of amount moved by the applicant/original claimant.
2. Heard Mr M.D. Shinde, learned Advocate for applicant and Mr M.R. Deshmukh, Advocate for respondent no.2. None present for respondent no.1 when the matter is called out.
3. Mr Shinde, learned Advocate for applicant submits that the tribunal has taken into consideration the pleadings and evidence on record coupled with medical evidence and held that claimant has suffered 28% permanent disability. Accordingly, the tribunal has assessed the compensation, having regard to the settled law laid down by the Honourable Supreme Court in various decisions, which is just and reasonable. This is not a case of false involvement. As such, the applicant is entitled to withdraw 100% amount of compensation deposited by the appellant/Insurance Company.
4. Mr M.R. Deshmukh, learned Advocate for respondent no.2 /Insurance Company opposed to allow this application mainly on the ground that the

tribunal has overlooked the medical evidence. The tribunal has also overlooked the admissions given by the Medical Officer who has issued permanent disability certificate. It is a case of 14% disability. The tribunal held it as 28% and accordingly, assessed the compensation which is incorrect and illegal. He pointed out that the claimant has sustained fracture injury to his left tibia and forehead injury. In cross-examination, it is admitted by the Medical Officer that at the time of issuance of disability certificate, the tibia fracture was united and the forehead injury was simple in nature. As such, there is no question of permanent disability. The tribunal has completely lost its sight in appreciating the medical evidence and arrived at incorrect conclusion. He further invited my attention to the deposition of one witness examined by the claimant on the point of milk business and argued that the tribunal has committed an error in accepting the income of the original claimant as Rs.26,000/- per month in view of such weak piece of evidence. According to Mr Deshmukh, the tribunal has awarded exorbitant compensation to the applicant when it is not a case of permanent disability. He submitted that he is ready to work out the matter finally. The appeal can be disposed of finally even in next week and he strongly opposed to grant this application.

5. Having regard to the submissions advanced by both the sides, I have gone through the impugned judgment and award passed by the M.A.C.T., Ahmedpur. The tribunal was pleased to assess the compensation at Rs.14,75,424/- with interest @ 9% per annum from the date of petition till realisation of the compensation of amount. The tribunal has given the details in paragraph 25 of the judgment as to how it has assessed the compensation under the head of pecuniary damages and non-pecuniary damages.

6. At this stage, it may not be appropriate to touch the merits of the appeal. However, it cannot be overlooked the aspect of permanent disability determined by the tribunal. It prima facie appears that the tribunal has overlooked the categorical admission given by Dr.Omprakash Kalyani. On going through the medical evidence, it prima facie appears that the claimant had sustained fracture to left tibia and injury to forehead. In cross-examination, Dr. Omprakash Kalyani went on admitting that at the time of issuance of disability certificate, the tibia fracture was united and the forehead injury was simple in nature. He went on admitting that the entire body permanent disability of the patient is 14%. Even then, the tribunal seems to have assessed the permanent disability of the claimant as 28%.

7. Mr Shinde, learned Advocate for applicant/original claimant submitted that the tribunal has correctly held the permanent disability as 28% looking to the profession of the claimant as an agriculturist and he was required to sell his buffalos and his business was stopped. The medical evidence played crucial role in determining the permanent disability of the claimant.

8. So far as the income part of the claimant is concerned that would be considered at the time of final hearing of the appeal. Prima facie, as observed above, the tribunal seems to have determined the permanent disability by ignoring the categorical admission given by Dr. Omprakash Kalyani. It has resulted into awarding compensation at higher side.

9. By taking into consideration all these aspects, I am convinced to allow the claimant to withdraw 50% amount of compensation on furnishing usual undertaking to the satisfaction of Registrar (Judicial) of this Court, which would meet the ends of justice.

ORDER

- (i) The Civil Application is hereby partly allowed.
- (ii) The applicant is permitted to withdraw 50% of the amount of compensation with accrued interest thereon deposited by the appellant/Insurance Company on furnishing usual undertaking to the satisfaction of Member, M.A.C.T., Ahmedpur.
- (iii) The Registry to transfer 50% of the amount of compensation with accrued interest thereon to the M.A.C.T., Ahmedpur for payment to the original claimant.
- (iv) Mr Shinde, learned Advocate for the applicant pointed out that the name of original claimant starts from 'Shivaji' and not 'Shivraj' and the tribunal has committed an error while showing the name of the claimant in the impugned judgment. The tribunal is directed to correct the name of original claimant as 'Shivaji @ Shivraj Sahebrao Wadikar' in the impugned judgment.
- (v) After furnishing the undertaking, the Member, M.A.C.T., Ahmedpur to make payment to the applicant/original claimant, as directed by this Court.
- (vi) The Civil Application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)