IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2926 OF 2021

IN

FIRST APPEAL NO. 1315 OF 2017

Shri Tanaji Daulat Chopade and Anr	..	Applicants.
Versus		
Shri Uday Shantappa Lingade and Anr.	..	Respondents

WITH

FIRST APPEAL NO. 1315 OF 2017

WITH

CIVIL APPLICATION NO. 3855 OF 2017

Shri Uday Shantappa Lingade	..	Appellant/ Applicant
Versus		
Shri Tanaji Daulat Chopade and Anr	..	Respondents

...

Mr. Bhalchandra S.Shinde for the Applicant in IA/2926/2021.

Mrs. S. S. Dwivedi for the Respondent no.2 in IA/2926/2021.

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CORAM: BHARATI DANGRE, J.

DATED : 31st MARCH, 2022

P.C:-

1. None for the Appellant.

2. By the present application the respondent to the Appeal, who is original claimant seeks withdrawal of the amount of compensation deposited by the Appellant before the MACT, Baramati alongwith accrued interest thereon till today.

3. The Claimant approached the Tribunal at Baramati by staking his claim under Section 166 of the Motor Vehicle Act, 1988 on account of amputation of his right leg in a vehicular accident when he was riding his motor cycle on 25th February, 2014 he was knocked down by a gas tanker belonging to respondent no. 1 and since he suffered injury in the accident he was required to undergo medical treatment resulting in his right leg being amputated and being fixed with artificial Jaipur foot on his right leg which also made him incur expenditure. He claims compensation of Rs. 10,00,000/- along with interest from the opposite party no. 1 and the insurance company.

4. His application is adjudicated by the Tribunal and the party no. 1 was directed to pay upto total compensation amount of Rs.9,30,000/- inclusive of the amount of Rs.25,000/- towards “No Fault Liability’ under Section 140 of M.V. Act) along with interest @ 9% per annum from the date of filing of the application till realization of the amount. Out of the said amount of compensation Rs. 5,00,000/- was directed to be invested in a fixed deposit for a period of five years in a nationalised bank.

5. The party no. 1 instituted the First Appeal and subject to deposit of the amount Awarded under the judgment along with interest as directed, stay came to be granted by this Court. The Appellant however deposited only the principal amount of Rs.9,30,000/- without interest accrued there upon and this fact was brought to the notice of the Court on 15th July, 2019 when it was recorded that, since the applicant had failed to comply with the direction of the Court directing him to deposit the entire amount of compensation which included amount of interest the ad-interim relief granted in the favour of the appellant stood vacated.

6. The counsel for the applicant/claimant state that he has filed the execution proceeding before the Tribunal.

He however made a request for withdrawal of the amount of compensation which is deposited before the Tribunal, since he and his family are facing huge financial distress and with the limited mobility of the applicant, his earnings are limited. It is pleaded that even to meet his daily requirements, he lacks funds and he also has to take care as his parents who are senior citizens and at times require medical attention. His two sons too are in their primitive years and pursuing education and even they also require money, for continuing their education.

7. Heard the learned counsel for the appellant and perused the application and counsel for the respondent no. 2 i.e. the original appellant has chosen to remain absent,

though copy of the application was served upon the appellant, the appellant states that affidavit of service is has already filed on 20th October, 2021.

8. Considering the application and the reasons stated I deem it fit to grant permission to the applicant to withdraw the amount of Rs. 9,30,000/- deposited by the appellant before the tribunal. The Tribunal shall permit the said withdrawal subject to undertaking being submitted by the claimant that if the appeal is decided in favour of the appellant he shall bring back the amount along with interest to be decided at the time of its hearing.

9. In case amount of Rs.5,00,000/- as directed by the tribunal is invested in fixed deposit and if the fixed deposit is nearing completion of its period, by a few weeks or months, subject to the discretion to be exercised by the applicant, the Tribunal shall permit its withdrawal.

(SMT. BHARATI DANGRE, J.)

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