K.S. Jadhav

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 20152 OF 2022
IN
FIRST APPEAL NO. 561 OF 2020

Karan Pratap Maniar Through Mother & Next Friend Smt. Meera Pratap Maniar	**...Applicant /** **Original Respondent**

Versus

Bajaj Allianz General Insurance Co. Ltd.	**...Respondent /** **Original Appellant**

Mr. Saumen S. Vidyarthi a/w Mr. Shasvat Vidyarthi, Advocates for Applicant.

Mr. D.S. Joshi, Advocate for Respondent.

CORAM : R.I. CHAGLA, J.

DATE : 28th November, 2022.

ORDER :

1. Heard learned Counsel appearing for the Applicant.

2. By this Interim Application, the Applicant is seeking permission to withdraw unconditionally the balance of amount lying deposited in the Tribunal. The Applicant was permitted to

withdraw 50% of Rs.93,51,970/- i.e. the amount deposited by the Appellant. The impugned Award is to the tune of Rs.47,89,916/- with interest @ 7.5% thereon from the date of application till realization and costs vide Judgment and Award dated 26th November, 2018 rendered by the Member VIII of Motor Accident Claims Tribunal (hereinafter referred to as 'MACT' for short), Mumbai.

3. The Applicant has filed the present application through his mother and next friend Smt. Meera Pratap Maniar. The Applicant is in paralytic condition having suffered traumatic brain injury resulting in complete paralysis of left side of the body, loss of hearing and total loss of vision in left eye, thereby making him 100% disabled, totally and permanently.

4. The Applicant has preferred the present application for withdrawal of the balance amount with accrued interest lying deposited in the Tribunal on the ground that subsequent to the order passed by this Court dated 21st November, 2019 permitting the Applicant to withdraw 50% of the amount

deposited by the Appellant, the Applicant is incurring substantial expenses as he has to be looked after by two attendants for 12 hours each which costs his mother a sum of Rs.20,000/- every month. This apart, the injured has to undergo physiotherapy atleast thrice a week that costs Rs.3000/- every week (Rs.1000/- per session) which comes to Rs.12,000/- per month. His medication cost also ranges from Rs.5,000/- to Rs.10,000/-. The Applicant is also susceptible to health complications and would require hospitalization as the incident occurred when the Applicant was at young age and he is now 37 years of the age and has to be operated for Cataract in the eye that costs for Rs.53,000/- plus other incidental expenses. Thus, on an average, the aggregate expenditure on inevitable expenses is Rs.45,000/- to Rs.50,000/-, majority of which are actual expenditure.

5. Learned Advocate appearing for the Applicant has submitted that the inevitable expenses has been recognized by the Division Bench of this Court in ***New India Assurance Company Limited Vs. Shweta Dilip Mehta (2011 ACJ 489***

Bombay DB). He has submitted that the expenses for the Applicant's treatment is for life time and looking to the normal life expectancy in India as can be seen from various reported decisions a multiplier of minimum 25 years can be taken on this count. He has relied upon the decision of ***Kavita Vs. Deepak, 2012 ACJ 2161 SC*** in that context. He has submitted that this Application, which has been made by the Applicant through his mother and next friend Smt. Meera Pratap Maniar is for withdrawal of the balance amount deposited in this Tribunal and which will be utilized solely for the purpose of inevitable expenses for medical treatment of the Applicant.

6. Learned Advocate appearing for the Appellant has submitted that substantial amount has already been withdrawn by the Applicant pursuant to the order of this Court dated 28th November, 2019 as the Applicant has been permitted to withdraw 50% of Rs.93,51,970/- which had deposited by the Appellant. He has submitted that in the event this Court allows any further withdrawals, security is required to be provided to

the Appellant including undertaking to be furnished by the Applicant that in the event the Appeal is decided in favour of Appellant, the withdrawn amount with interest at such rate as determined by this Court will be returned. Further, the Applicant should be permitted to utilize any amount allowed to be withdrawn solely for the Applicant's expenses and for no other expenses.

7. I have considered the submissions. I have noted that the Applicant was only 22 years of age when he met with an accident due to the rash and negligent driving of Motor Car No.MH-06-M-9701 which belonged to Respondent No.2 and insured by the Appellant. The Applicant suffered injury which resulted in complete paralysis of the left side of the body, loss of hearing and total loss of vision in left eye thereby making him 100% disabled, totally and permanently. Further, the Applicant had to undergo medical treatment which is classified as inevitable expenses, which is continuously being incurred as set out in Paragraph 3 (h) at Page 7 of the Interim Application.

Thus, a case has been made out for permitting further withdrawal of the amount deposited by the Appellant with the MACT, Mumbai. The Division Bench of this Court in **New India Assurance Company Limited (supra)** has recognized inevitable expenses. These inevitable expenses in the present case are required to be incurred for a life time. Hence, considering that the first appeal has been admitted by this Court on 28th November, 2019 and may take time before the first appeal comes up for hearing, the Applicants are permitted to withdraw an additional amount from the amount deposited by the Appellant. This would be subject to necessary safeguards as directed below. Hence, the following order :

i) The Applicant through his mother and next friend Smt. Meera Pratap Maniar is permitted to withdraw additional 20% of the amount deposited by the Appellant subject to the Applicant's furnishing an undertaking against disbursement of the additional amount by the MACT that if the Appellant succeeds in appeal, the

Applicant/Original Respondent shall return the amount with interest at such rate as may be determined by this Court.

ii) Interim Application is accordingly disposed of.

iii) In view of the first appeal having been expedited by this Court, the first appeal shall be placed on the weekly board for final hearing, high on board in the week commencing from 16th January, 2023.

iv) Liberty to the Applicant/Original Respondent in the first appeal to file compilation of documents and authorities within a period of 4 weeks from the date of this order.

[R.I. CHAGLA, J.]