

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO.1545 OF 2023
IN FA/1055/2022**

FAIYAZ HUSAIN EBANE HASAN
VERSUS
NATIONAL INSURANCE COMPANY LTD THROUGH ITS
DIVISIONAL MANAGER

...

Mr. Mayur V. Salunke, Advocate for the Applicant.
Mr. A. S. Usmanpurkar, Advocate for Respondent No.1.

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 14th JULY, 2023.

PER COURT:-

1. By this application, applicant seeks permission to withdraw the amount deposited by the Insurance Company.

2. Mr. Salunke, learned Advocate appearing for the applicant would submit that the Tribunal has passed the Award based on the evidence tendered in service on behalf of the applicant/orig. Claimant. He would submit that the applicant has suffered permanent disablement. The Tribunal assessed the compensation based on notional income. In that view of the matter seeks withdrawal of the entire amount deposited by the appellant/Insurance Company.

3. Per contra, Mr. Usmanpurkar, learned Advocate appearing for Insurance Company submits that the defence of breach of policy i.e. non-availability of permit has been raised in the appeal. The insurer may be entitled to avoid liability undertaken under Section 149 (2) of the Motor Vehicle Act, 1988.

4. Having considered the submissions advanced, it can be seen that there is no dispute as regards the entitlement of the compensation to the claimant. The dispute regarding the infraction of the permit can be between the insurer and the owner of the vehicle.

5. In that view of the matter, there shall not be any impediment to permit the applicant to withdraw the amount by putting some conditions. Hence, the following order:-

ORDER

- a. The Civil Application is allowed.
- b. The applicant is permitted to withdraw the entire amount deposited by the Insurance Company on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court.

6. The Civil Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE