

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

**923 CIVIL APPLICATION NO.5776 OF 2023
IN FA/621/2023 WITH CA/1804/2023 IN FA/621/2023**

IMRAN KHAN S/O ZAFAR KHAN PATHAN
VERSUS
THE NEW INDIA ASSURANCE CO LTD THROUGH ITS
DIVISIONAL MANAGER, ADALAT ROAD AURANGABAD

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Mr. Shaikh Kayyum Najir, Advocate for the applicant.

Mr. M.M. Ambhore, Advocate for respondent No.1.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 14.07.2023

ORDER:-

1. Heard rival submissions. The applicant is seeking withdrawal of the entire amount of compensation alongwith the interest accrued thereon, which has been deposited by the respondent - Insurance Company.

2. The learned Counsel for the Insurance Company opposed the application by mentioning that the accident took place on 26.01.2018, but the F.I.R. was lodged on 03.02.2018 mentioning that one Swift Car was involved. In the spot panchnama also there is mention of Swift Car. But suddenly on 07.02.2018, one person came to police and told that in fact one Indica car was involved in the accident. He further pointed out that the person who told the police about Indica car was not examined by the applicant claimant. He also pointed out that there was head-on collision between two vehicles and the income of applicant claimant without any proof was considered to the tune of Rs. 15,000/- per month.

3. The learned Counsel for the applicant - claimant also submits that the applicant was Software Engineer and his left leg has been amputated. He further pointed out that the driver and owner of the offending Indica car have admitted involvement of the same in the accident. According to him, the Insurance Company did not lead any evidence as regards the alleged replacement of offending vehicle.

4. It is significant to note that though the respondent Insurance Company is claiming that vehicle was replaced, but no evidence is adduced by it on this aspect. Moreover, the driver and owner of the Indica car have admitted it's involvement. However, considering the fact that there was head-on collision, the applicant is permitted to withdraw 50% of the deposited amount of compensation alongwith proportionate interest accrued thereon till date on, usual undertaking to the satisfaction of the Registrar (Judicial) of this Court.

5. The remaining amount be kept in F.D.R. in any nationalized Bank on yearly renewal basis till final disposal of this appeal.

6. The Civil Application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)