

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

931 CIVIL APPLICATION NO.8431 OF 2023
IN FA/3659/2022

EKNATH BALKISAN BHANDARI
VERSUS
RELIANCE GENERAL INSURANCE CO LTD AND ANR

...
Advocate for Applicants : Mr. Mahajan Lalitkumar S.
Advocate for Respondent 1 : Mr. Swapnil Patil h/f R.H. Dahat
...

AND

CA/16005/2022 IN FA/3659/2022

RELIANCE GENERAL INSURANCE CO. LTD.
VERSUS
EKNATH BALKISHAN BHANDARI

...
Swapnil Patil h/f R.H. Dahat advocate for applicant.
Mr. L S Mahajan advocate for respondent.
...

CORAM : S. G. CHAPALGAONKAR, J.
Dated: July 12, 2023
...

PER COURT :-

ORDER IN APPLICATION FOR WITHDRAWAL OF AMOUNT (8431/2023) :-

1. By this application, the applicant/original claimant seeks withdrawal of the amount deposited by the respondent insurance company in pursuance of the award passed by Tribunal.

2. Mr. Mahajan, learned advocate appearing for the applicant would submit that, the claimant is the senior citizen and suffered permanent disablement of 55%. He would submit that the medical expenses incurred were more than Rs.10 Lakhs during the course of the hospitalization. Therefore, he would seek permission to withdraw the amount deposited by the appellant-insurer.

aaa/-

3. Per contra, Mr. Patil, learned counsel appearing for the respondent/insurance company opposes the prayer saying that good grounds are there in the appeal. He submits that the Tribunal considered excessive income of the claimant. Further the issue of contributory negligence would arise for consideration in this appeal.

4. Apparently, there is no dispute that the claimant has spent more than Rs.10 Lakhs towards medical expenses and he suffered permanent disablement of 55%. On perusal of the judgment, there is nothing to infer that the claimant was the driver of the car at the time of the accident. Therefore, whether the issue of contributory negligence would arise or not would also be the question to be considered. In this background, it would be appropriate to allow the applicant to withdraw 75% of the amount deposited by the insurance company subject to furnishing of an usual undertaking before the Registrar (J) of this Court. Civil application stands disposed off.

ORDER IN APPLICATION FOR STAY (CA 16005 OF 2022) :-

By this application, the applicant prays to grant stay to the execution of the award which is subject matter of the appeal.

Mr. Patil, learned advocate appearing for the applicant submits that entire amount in terms of the award has been deposited with the Registry of this Court.

Statement is not controverted by Mr. Mahajan learned advocate for the respondent.

In that view of the matter, civil application is allowed in terms of prayer clause 'B'. Civil application is disposed off

aaa/-

ORDER IN FIRST APPEAL NO.3659 OF 2022 :-

Call for record and proceedings.

Place the first appeal for further consideration on 10.8.2023.

(S. G. CHAPALGAONKAR, J.)

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aaa/-