IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 16751 OF 2022

IN

FIRST APPEAL NO. 1207 OF 2019

Abdul Salam Mohammad Mustafa Shah ….. **Applicant**

IN THE MATTER BETWEEN

The Oriental Insurance Co. ….. **Appellant**

VERSUS

Abdul Salam Mohammad Mustafa Shah & Anr. ….. **Respondents**

Mr.Devendranath S. Joshi for the Appellant.

Mr.S.R.Gupta for the Applicant.

CORAM: RAJESH S. PATIL, J.

DATE : 10th OCTOBER, 2023

P.C:-

This interim application is filed for withdrawal of the amount deposited by the insurance company.

2. It is the case of the applicant that the applicant was employed by the respondent no.2 as a driver on the date of the accident and in the unfortunate accident, he sustained serious injuries.

3. Due to the injuries, he has suffered loss of earning capacity by 100%. It is further stated that the entire family was depending on his

income. His family consists of his wife, four daughters and one sone. The wife of the applicant is a housewife and all his children are studying. There is no source of income in the family and it is very difficult to maintain day to day expenses including that of education and medicines.

4. Mr.Joshi, learned counsel appearing for the insurance company has opposed this application on the ground that the applicant though was having LMV licence on the date of the accident. However, after the accident, he has obtained HMV licence. Mr.Joshi fairly submits that even though this fact can be gathered from the document annexed at Ex.B to the First Appeal, the said document was never produced before the Trial Court.

5. Having heard, I am satisfied that the case is made out for partly allowing this interim application. I have gone through the contents of the interim application. According to me, in the interest of justice, it would be appropriate if the Applicants is permitted to withdraw 60% of the ‘Award’ amount deposited by the Insurance Company along with accrued interest as per the ratio mentioned in the impugned Judgment

and Award.

6. The 60% of the 'Award' amount awarded to the applicant allowed to be withdrawn along with accrued interest, upon furnishing an undertaking before the concerned MACT to the effect that if they fail in this First Appeal, they will return the amount with interest, at such rate as may be directed by this Court at the time of disposal of the First Appeal.

7. The Registry to see that the money is transferred.

8. Balance amount shall be invested in the fixed deposit of a nationalized bank initially, for a period of one year and thereafter for like period depending the pendency of this Court.

9. All the parties to act on an authenticated copy of this order. Issuance of certified copy of this order is expedited.

10. The interim application is accordingly disposed off.

[RAJESH S. PATIL, J.]