# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE SIDE JURISDICTION

## INTERIM APPLICATION NO. 12708 OF 2023
## IN
## FIRST APPEAL (ST) NO. 26311 OF 2022

Prakash Dharmaji Mokal. ….Applicant

**IN THE MATTER BETWEEN:**



TATA AIG General Insurance
Company Limited Through
Divisional Manager ….Appellant

**Versus**

Prakash Dharmaji Mokal & Anr. ….Respondents

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Mr. Sanjay Ghaisas for the Applicants.
Mr. D. S. Joshi for the Respondent.

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**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 29th NOVEMBER, 2023.**

**P.C. :**

1. Heard learned counsel for the Applicants and learned counsel for the Respondent/Insurance company.

2. Learned counsel for the Applicant submits that Applicant

has suffered permanent disability in the accident. At the time of accident, Applicant was 60 years old, the injury was caused to his head hence, Applicant is unable to move without any assistant. Applicant has no source of income, Applicant requires the amount for his daily expenses and medical treatment. Hence, requested to allow the Application.

3. Learned counsel for the Respondent/Insurance Company strongly objected to allow the Application on the ground that, the offending bike was owned by son of Applicant and accident was caused due to ditches on the road as per the pleadings of Applicant. This fact is not considered by the Tribunal and wrongly fixed liability on the Insurance Company which is challenged by the Applicant before this Court by way of this Appeal. If Applicant is permitted to withdraw the amount then it would be difficult for the Insurance Company to recover the amount if Respondent/Insurance Company succeeds in the Appeal. Hence, requested to reject the Application.

4. I have heard both learned counsel, Applicant has suffered injury and permanent disability in the accident. He is more than 60 years old. He is confined to bed. He needs the amount for medical treatment and for daily expenses. Considering thess facts, I pass

following order.

**ORDER**

i. Application is allowed.

ii. Applicant is permitted to withdraw 50% amount along with accrued interest out of deposited amount, subject to filing usual undertaking.

**(SHIVKUMAR DIGE, J.)**