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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1039 OF 2012

The New India Assurance Co. Ltd.
D. O. No. 130600, Gurudwara Building,
2nd floor, Dr. Ambedkar Road,
Dadar, Mumbai 400 014
Policy No. 130600/31/02/01343
Validity from 23/04/2002 to 22/04/2003

....Appellant
(Org. / Insurer)

Versus

1. Mr. Bhimrao Punja Kapadne,
Age about 43 years,
Residing at Ketkipada, Magalsutra Chawl
Near Telephone Exchange,
Dahisar Check Naka,
Mumbai 400 068

(Org. Applicant)

2. Mr. P. J. Auumainayagam,
Room. No. 4 -19,
Chicholi Naka, Post Kaman,
Taluka- Vasai, Dist. Thane 400 605.
(Owner of M/Dumper No. MHF-1598)

..Respondents
(Ori. Applicant
& Org. Opp Party)

Mr. D. R. Mahadik for the Appellant.
Mr. S. R. Gupta for the Respondents.

CORAM : S. G. DIGE, J.

DATE : 17th FEBRUARY 2023.

JUDGMENT :

1. The issue involved in this appeal is compensation awarded on higher side.

2. It is contention of learned counsel for the appellant that respondents/claimant had filed claim petition before labour Court for compensation and the employer of the claimant deposited amount of Rs.1,49,000/- under Workmen Compensation Act 1923. The said amount is withdrawn by the claimant. Thereafter, the claimant filed the claim petition under the provision of Motor Vehicle Act 1988 (for short '**MV Act**') and compensation of Rs.20,09,000/- is awarded by the Tribunal. The amount granted under the Workmen Compensations Act 1923 be deducted from the compensation awarded under MV Act, as the claimant cannot claim compensation for same injury under two Acts. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the claimant that the claimant is ready for deduction of the amount of Rs.1,49,000/- deposited by the employer under Workmen Compensations Act 1923,

and the remaining amount be awarded to the claimant.

4. I have heard both learned counsel. The Motor Accident Claims Tribunal, Mumbai has awarded amount of Rs. 20,09,000/- to the claimant. Whereas, the employer of claimant has deposited amount of Rs.1,49,000/- under Workmen Compensations Act 1923. The claimant has withdrawn the said amount, if this amount is deducted from amount of Rs.20,09,000/-, it comes to Rs. 18,60,000/-. The claimant's advocate agrees for this amount as compensation amount.

5. In view of above, I pass following order.

ORDER

- i. Appeal is allowed.
- ii. The claimant is entitled for amount of Rs. 18,60,000/-, at the rate of interest 7.5% per annum from the date of filing the application till its realization.
- iii. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
- iv. The appellant is permitted to withdraw reduced

amount of Rs.1,49,000/- along with accrued interest thereon.

- v. The statutory amount be transmitted to the Motor Accident Claims Tribunal, parties are at liberty to withdraw it.

(S. G. DIGE, J.)