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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.15363 OF 2023
IN
FIRST APPEAL NO.738 OF 2018

Vinit S. Magar ...Applicant
V/s.
Bajaj General Insurance Co. Ltd. & Anr. ...Respondents

Mr.Abhishek Ingle with Mr.Tejpal S. Ingale for Applicant.

Mr.Devendranath Joshi with Mr.Pradyunna Thakurdesai for Respondent No.1.

CORAM : RAJESH .S. PATIL, J.
DATE : 13TH SEPTEMBER, 2023.

P.C. :-

1. This Interim Application is filed by the original Claimant No.1 seeking withdrawal of the decretal amount deposited by the Insurance Company. It is the case of the Applicant No.1 that the claim petition was filed by him along with his son Sumit. It is stated that Sumit had suffered 89% permanent disability in an unfortunate accident . The claim petition filed before MACT, Nashik was allowed partially and the Opponents were directed to pay a sum of Rs.25,03,337/- towards compensation amount along with interest at the rate of 6% p.a. The Insurance Company has challenged the

impugned judgment and award by filing the First Appeal, which has been admitted , in this Court.

2. After the First Appeal was admitted, the claimant had filed Civil Application No.3698 of 2017 for withdrawal of partial amount from the decretal amount deposited by the Insurance Company. By an order dated 12 December 2017, this Court had permitted the claimants to withdraw partial amount of Rs.10,03,337/- along with interest accrued thereon. The said amount was withdrawn and the balance amount was deposited by the Department in the National Bank.

3. Unfortunately thereafter on 11 March, 2019 Sumit died. So also it is the case of the Applicant No.1, who is father of the deceased son that after the death of his son Sumit, he went into depression and unfortunately and required constant medical treatment. The Applicant No.1 was having urinary problem and he has to undergo various steps. The said tests were carried out in Kokilaben Dhirubai Ambani Hospital, Navi Mumbai on 17 July 2023 and 26 July 2023 and unfortunately, Applicant No.1 was detected cancer. Due to the said illness, Applicant No.1 is constantly to met the doctors and take medicine and carry out further tests. He states that huge medical expenses are incurred by Applicant No.1. Therefore, he has filed the present Interim Application so that he be allowed to withdraw a sum

of Rs.10,00,000/- from the balance amount. It is also further stated that Applicant No.1 has undergone surgery on 12 September 2023.

4. The Insurance Company has not filed any reply to this Interim Application. Mr.Joshi, learned counsel for the Insurance Company has vehemently opposed this Interim Application on the ground that this claim was filed on behalf of Sumit, who was then minor. Hence father can't take benefit of the amount deposited by the Insurance Company. I have heard both the counsel and have also gone through the contents of the Interim Application and satisfied that the case is made out for partial withdrawal of the balance decretal amount deposited by the Insurance Company.

5. I hereby allow a sum of Rs.8,00,000/- to be withdrawn by the Applicant No.1 out of the decretal amount, 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.

6. The 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 upon the pendency of this Court.

7. The Interim Application is accordingly disposed of.

8. All parties to act on the authenticated copy of this order.

Issuance of certified copy of this order is expedited.

(RAJESH S. PATIL, J.)