



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

936 CIVIL APPLICATION NO. 2465 OF 2024
IN FA/3964/2017

SK. RAFIQ SK. AZIZ

VERSUS

THE NEW INDIA ASSURANCE CO. LTD., ADALAT ROAD AURANGABAD

...

Ms. Mangal R. Chavan Manal, Advocate for Applicant

Mr. M. M. Ambhore, Advocate for Respondent No.1

CORAM : Y. G. KHOBRAGADE, J.

DATE : 22nd March, 2024

ORDER:

1. Heard learned counsel appearing for the applicant and learned counsel for the respondent- Insurance Company.

2. By the present application, the applicant prayed for permission to withdraw the remaining 50% amount arising out of the judgment and award dated 30.08.2016 passed by the learned Motor Accident Claims Tribunal, Aurangabad in MACP No. 600 of 2013.

3. The learned counsel appearing for the applicant submits that the Insurance Company had filed First Appeal No. 3964 of 2017 challenging the judgment and award dated 30.08.2016, however, the said appeal came to be dismissed as per order dated 16.10.2023 and the appellant Insurance Company has not taken any steps for its restoration. Therefore, the applicant is entitled to receive the remaining 50% amount which is lying with this Court.

4. The learned counsel appearing for the Insurance Company submits that he wants to file application for restoration, draft is ready for filing and it will be filed within a short period. Therefore, if the amount is disbursed to the applicant, hurdle will be caused to the Insurance Company to recover the said amount from the applicant, in case the award is modified or varied. Hence, prayed for rejection of the application.

5. It is not in dispute that on 30th August, 2016, the learned Member, Motor Accident Claims Tribunal passed the judgment and award in MACP No. 600 of 2013 and granted compensation to the tune of Rs.6,89,950/- with interest @ 9% p. a. from the date of institution of the application till realization of the entire amount. It is also not in dispute that the Insurance Company filed First Appeal No 3964 of 2017 before this Court and challenged the said judgment and award. As per mandatory provision, the Insurance Company deposited an amount of Rs.25,000/- under DD No.140515 dated 24.10.2016 and Rs.8,51,397/-under DD No. 354456 dated 29.05.2017. On 09.10.2017, the present applicant-claimant was permitted to withdraw 50% amount on furnishing undertaking and 50% amount is lying with this Court.

6. It is undisputed fact that the appeal filed by the Insurance Company has been already dismissed for want of prosecution and the appellant Insurance Company has not taken any steps till date to get

the appeal restored even after lapse of more than six months. Merely stating that the draft application for restoration is ready, does not mean that the appeal is restored. Therefore, the applicant/claimant is entitled to withdraw the remaining 50% amount which is lying with this Court. Accordingly, I am inclined to grant the present application and proceed to pass the following order:

O R D E R

(A) Civil application is hereby allowed.

(B) The applicant is permitted to withdraw the balance 50% amount with accrued interest thereon, on furnishing an undertaking that in case the appeal is restored and the judgment and award passed by the learned Member, Motor Accident Claim tribunal is modified or varied, in that event, the applicant would deposit the said amount before this Court within a period of four weeks therefrom.

(Y. G. KHOBRAGADE, J.)

JPChavan