



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 CIVIL APPLICATION NO. 5399 OF 2024
IN FAST/36508/2023
WITH
CIVIL APPLICATION NO. 14930 OF 2023
IN FAST/36508/2023
WITH
CIVIL APPLICATION NO. 14931 OF 2023
IN FAST/36508/2023

Durgaprasad Babanrao Shinde

VERSUS

Icici Lombard General Insurance Co Ltd And Anr

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Advocate for Applicant : Mr. D.P. Munde

Advocate for Respondent 1 : Mr. S.S. Patil h/f. Mr. R.H. Dahat

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CORAM : KISHORE C. SANT, J.

Dated : June 13, 2024

PER COURT :-

1. Heard the learned advocates for the parties.
2. Civil Application No. 5399/2024 is filed by the applicant/original claimant for withdrawal of amount deposited by the appellant/Insurance Company in this Court.
3. The present applicant has filed MACP No. 271/2017 before the learned MACP, Parbhani. His claim petition came to be allowed and Insurance Company was directed to pay amount of Rs.19,17,425/- to the claimant along with interest at the rate of 6% p.a.
4. The learned advocate for the applicant submits that though the claim is allowed, the applicant is deprived of the amount due to pendency of this appeal and the amount is lying in this Court. He,

thus, prays for allowing the application.

4. The learned advocate for the Insurance Company vehemently opposes the application, stating that the Insurance Company is not liable to pay any compensation. It is the case of the applicant himself that he was riding on a motorcycle as a pillion rider and the said motorcycle was dashed by a car. The claimant himself lodged the complaint against the car owner stating that the accident took place due to negligence of the car, however, the claimant has not added Insurance Company of the motorcycle and the owner of the motorcycle as a party respondent to the claim petition. He, thus, submits that in absence of the owner of the motorcycle and Insurance company of the motorcycle, as a party respondent, the claim of the applicant could not have been allowed. Claim is filed only against the Insurance Company of the car. The learned Tribunal has recorded a finding that there is contributory negligence and in that case, it was necessary for the claimant to make the Insurance Company, who had insured the motorcycle as a party along with the owner of the motorcycle. He, thus, submits that there are good chances of success in the appeal. Thus, he opposes the application.

5. Taking into consideration the above submissions, this Court is of the opinion that it would not be in the interest of justice to allow the applicant to withdraw the entire amount of compensation deposited in this Court. The interest of justice would meet by allowing the applicant to withdraw amount of Rs.10,00,000/- (Rupees Ten Lakh

only) out of the amount of Rs. 26,72,294/- deposited by the Insurance Company in this Court along with interest.

6. Hence, the application is allowed partly. The applicant is entitled to withdraw amount of Rs.10,00,000/- (Rupees Ten Lakhs only) on furnishing an undertaking that in case appeal is decided against him, he will re-deposit the amount of Rs.10,00,000/- (Rupees Ten Lakhs only) within twelve weeks from the date of said judgment. The civil application is disposed of.

7. Since, the amount awarded is deposited in this Court and since the Court has already allowed the applicant to withdraw amount of Rs.10,00,000/- (Rupees Ten Lakhs only), the stay application needs to be allowed. Hence, Civil Application No. 14931/2023 filed for stay is allowed. There shall be stay to the execution, implementation and operation of the impugned judgment and order dated 15.11.2022 passed by the learned MACP in MACP No. 271/2017. The application stands disposed of.

8. In the appeal, the appellant to take steps to serve the respondent No. 2.

(KISHORE C. SANT, J.)

ssc/