

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.761 OF 2024
[FOR WITHDRAWAL]
IN
FIRST APPEAL NO.630 OF 2022**

Tanaji Jagannath Survase ...Applicant

In the matter between:-

The New India Assurance Company Limited ...Appellant

vs.

Tanaji Jagannath Survase and Anr. ...Respondents

Mr.Anilkumar Bagul i/b. Mr.Rohan Barge:-	Advocate for Applicant.
Mr.Devendranath Joshi a/w Mr.Pradyumna Thakurdesai:-	Advocates for Appellant.

CORAM : S. M. MODAK, J.

DATE : 22nd AUGUST 2024

P. C. :-

1. This is an Appeal preferred by the Appellant – Insurance Company.
2. Heard learned Advocate for Respondent No.1 – Claimant and learned Advocate Shri.Joshi for the Appellant – Insurance Company.

3. The Claims Tribunal has directed the Insurance Company and the owner to pay sum of Rs.7,98,000/- (Rupees Seven Lakh Ninety Eight Thousand Only) with other benefits. The entire amount is deposited as directed by this Court.

4. The Claimant was already permitted to withdraw 50%. Now, he wants withdrawal of remaining amount.

5. According to Mr.Joshi, learned Advocate for the Appellant – Insurance Company, two grounds are taken in this Appeal. First, delay in filing the Claim Petition. It is almost 9 years after the accident. Second, breach of policy by the owner by not holding a valid driving licence. The RTO¹ Representative was examined. The owner has not produced a licence before the Tribunal.

6. There is no service report on Respondent No.2 – owner. Let, fresh notice be issued returnable on 3rd October 2024. He may be served by private notice. Affidavit of service be filed.

7. It is true that the Claimant can also execute an Award against the owner. Execution is also filed. Its copy is annexed to the withdrawal Application. Learned Advocate is not having instructions about the same. Perused the certificate annexed to the Application. He is in dire

¹ Regional Transport Office

need of money. Hence, order:-

ORDER

- (i) The Claimant – Tanaji Jagannath Survase is permitted to withdraw 25% of the remaining amount along with the interest on furnishing an usual undertaking (after deducting the amount which is already withdrawn).
- 8. In view of that, **Interim Application is disposed of.**
- 9. **Call Record and Proceeding.**
- 10. **Compilation be filed.**

[S. M. MODAK, J.]