

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.7854 OF 2024
IN
FIRST APPEAL (ST.)NO.23521 OF 2015

Mr. Tanaji M. Sakhare .. Applicant.

In the matter of
Divisional Manager,
The New India Assurance Co. Ltd., .. Appellant.
v/s.

Mr. Tanaji M. Sakhare .. Respondents.
& Another

Ms. Poonam Mital, for the Appellant,
Ms. Yashika Jain h/f. Mr. Jitendra Gor, for Respondent No.1.

CORAM: FIRDOSH P. POONIWALLA,J.
DATE : 21st NOVEMBER, 2024.

PC:-

This Interim Application has been filed seeking to withdraw an amount of Rs.2,68,800/- deposited in the Lower Court by the Insurer.

2 This Application for withdrawal of the amount has been opposed by the learned Counsel appearing on behalf of the Appellant on the ground that, during the course of evidence, it had come to light that one Dr. Kshitij Shah, who had been examined on behalf of the Applicant, has admitted that he had not taken any X-ray of the Applicant. He had further admitted that he has not maintained the clinical notes of the treatment of the Applicant. Further, it had not been brought on record

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that the Applicant had been treated by the said doctor before the issuance of disability certificate Exh. U-19 or subsequently.

3 In my view, this submission of the learned Counsel appearing on behalf of the Appellant cannot be accepted as, despite this evidence, the Lower Court has, after considering the totality of evidence, arrived at a conclusion that the Applicant had sustained 50% loss of earning capacity in the accident and that he had 50% partial disablement.

4 In my view, considering all the facts and circumstances of the case, it will be fair, and in the interests of justice, to permit the Applicant to withdraw 50% of the amount of Rs.2,68,800/- deposited by the Appellant in the Lower Court.

5 For the aforesaid reasons, following order is passed:-

- (a) The Applicant is permitted to withdraw 50% of Rs.2,68,800/- i.e. Rs.1,34,400/-;
- (b) Interim Application is disposed of. However, there will be no order as to costs.

(FIRDOSH P. POONIWALLA,J.)