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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.10199 OF 2024
IN
FIRST APPEAL (ST.) NO.11556 OF 2024.

Mr.Vishwesh Hasmukh Shah

.. Applicant /
Org.Claimant

In the matter between

The Municipal Corporation of Greater
Mumbai Through the General Manager
BEST Undertaking

.. Appellant

Versus

Vishwest Hasmukh Shah

.. Respondent

**Mr.Bharat Gadhavi a/w Mr.Sarvesh Deshpande, Mr.Ankit Shitole i/b
Mr.Surendra Sonawane, Advocate for Applicant.**

**Mr.Pralhad Paranjpe a/w Ms.Aparajita Mahto, Ms.Krushika Udeshi
i/b Mr.Sagar Shetty, Advocate for the Appellant.**

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**
DATE: JULY 15, 2024

P. C.

1. The above Interim Application is filed by the Applicant Respondent seeking a withdrawal of the amount of Rs.1,50,00,000/- (Rupees

One Crore Fifty Lakhs Only) deposited by the Appellant with the Motor Accident Claims Tribunal, Mumbai.

2. It is the case of the Applicant/Respondent that because of the accident that he had suffered, he had to undergo vigorous medical treatment for the injuries suffered by him and, in the process, incurred huge medical expenses. It is the further case of the Applicant that due to the accident, the claimant has sustained 50% permanent partial disability and 50% permanent neurological disability. Same has also been certified by the expert Doctors. It is further stated that the above aspects clearly fall under the head of 100% loss of earning disability. Because of the injuries suffered, the Respondent is under continuous medical treatment, and the said expenses are recurring in nature, the above Application is made for withdrawal of the amount of Rs.1,50,00,000/-.

3. This Application is vehemently opposed by the learned Advocate appearing on behalf of the Appellant. Firstly, he submitted that the Tribunal's order is assailed in the above Appeal and therefore, the matter has not attained finality. Secondly, the Tribunal has failed to take into consideration that this is a case of contributory negligence on the part of the Respondent and therefore, could not have awarded the entire amount of Rs.2,29,62,100/-

as compensation to the Claimant / Respondent/Applicant. Once these are the facts, no case is made out for allowing the Respondent to withdraw the amount of Rs.1,50,00,000/- deposited with the Motor Accident Claims Tribunal, Mumbai, was the submission.

4. We have heard the learned counsel for the parties at some length. It is not in dispute that the Applicant/Respondent has suffered an accident at the hands of the Driver of the BEST (the Appellant). There is also a finding of the MACT, Mumbai that the Respondent has sustained 50% permanent partial disability and 50% permanent neurological disability and the same has been certified by the expert Doctors.

5. Considering that the Applicant/Respondent would require continuous medical treatment and that the expenses are recurring in nature, we are of the view that the Applicant/Respondent can be permitted to withdraw the amount of Rs.1,50,00,000/- deposited by the Appellant with the MACT, Mumbai. We say this because even assuming for the sake of argument that the Appellant is correct in his submission that the Applicant/Respondent is guilty of contributory negligence, it cannot be that nothing is due and payable to him. In fact, we are of the opinion that taking these factors into consideration, this Court on 2nd May 2024, directed the

Appellant to deposit only a sum of Rs.1,50,00,000/- with the MACT, Mumbai/.

6. In view of the foregoing discussion, we allow the above Interim Application in terms of prayer clause (a), which reads thus:

“(a) The Applicant / Orig. Claimant may kindly be allowed to withdraw the amount of Rs.1,50,00,000/- deposited by the Appellant before the MACT, Mumbai.”

7. The Applicant shall make an Application to the MACT, Mumbai for withdrawal of the aforesaid amount of Rs.1,50,00,000/-. If and when the Application is made, MACT, Mumbai shall permit the Applicant to withdraw the said amount as expeditiously as possible and in any event, within a period of one week of the said Application being made. This is, of course, subject to the Applicant giving an undertaking to this Court that in the event the above Appeal succeeds, he shall bring back the amount withdrawn by him or any part thereof, as ordered by this Court. We may hasten to add that we have passed this Order in the peculiar facts and circumstances of the case and it should not be treated as a precedent in any future matter.

8. The above Interim Application is disposed of in the aforesaid terms. However, there shall be no order as to costs.

9. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]