

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.13951 OF 2024
IN
FIRST APPEAL (L) NO.20022 OF 2024

Shri. Jayant Dolatrai Mitra

..Applicant

IN THE MATTER BETWEEN

United India Insurance Co. Ltd.

.. Appellant

Versus

Mr. Jayant Dolatrai Mitra & Anr.

.. Respondents

Mr. V.N. Mehta a/w. Mr. S.U. Mehta, Advocate for the Applicant.

Ms Varsha Chavan, Advocate for Appellant-Insurance Company.

**CORAM: B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

DATE : DECEMBER 10, 2024

P. C.

1. The above Interim Application is filed by the Applicant (the original Claimant before the Motor Accident Claims Tribunal, Mumbai “**MACT**”) seeking to withdraw the entire amount of Rs.1,67,55,938/- deposited by the Appellant-Insurance Company in the above Appeal.

2. The Learned Advocate appearing on behalf of the Appellant-Insurance Company submitted at the outset that in the above Appeal,

what is being disputed is the quantum awarded by the MACT, the breakup of which is as follows :-

1.	Medical Expenses	Rs.27,00,000/-
2.	Special Diet	Rs.50,000/-
3.	Conveyance	Rs.50,000/-
4.	Loss due to disability	Rs.62,10,000/-
5.	Attendant Charges	Rs.5,00,000/-
6.	Future treatment, medicine and surgical for artificial limb/wheel chair.	Rs.5,00,000/-
7.	Pain and Suffering	Rs.5,00,000/-
8.	Loss of amenities and enjoyment of life.	Rs.2,00,000/-

3. The Learned Advocate appearing on behalf of the Appellant-Insurance Company submitted that the figures at Item Nos.4, 5 and 6 of the above table is what is disputed by the Appellant-Insurance Company. In these circumstances, she submitted that approximately Rs.35,00,000/- is undisputed and only the balance amount of Rs.77,10,000/- is disputed.

4. Considering the aforesaid statement, we are of the opinion that as far as the amount of Rs.35,00,000/- together with interest @ 7.5% p.a. is concerned, the same can certainly be allowed to be withdrawn by the Applicant unconditionally. We, therefore, direct that the Applicant shall be entitled to withdraw a sum of Rs.57,00,000/- (out of the sum of Rs.1,67,55,938/-) unconditionally.

5. As far as the balance amount of the deposit is concerned, namely, a sum of approximately Rs.1.10 Crores, the Learned Advocate appearing on behalf of the Appellant-Insurance Company vehemently opposed the withdrawal of any amount whatsoever. She submitted that there is a serious dispute with reference to the quantum awarded towards disability (Item 4), and which is a substantial amount. The Applicant therefore ought not to be allowed to withdraw any further amount. She submitted that though the Applicant may have suffered from a physical disability, that is not enough for the MACT to award such a large amount towards the same. She submitted that there has to be a functional disability which has to be proved before such a huge amount is awarded to the Applicant herein.

6. We have heard the Learned Advocate appearing on behalf of the Appellant-Insurance Company. We have also heard the Learned Advocate appearing on behalf of the Applicant. Though there may be a serious dispute with reference to the quantum awarded by the MACT in relation to the loss due to disability, we do not think that the Applicant would not be entitled to any amount whatsoever under the aforesaid head. When the Appeal is heard, at that time, the said amount may be reduced or may be retained. Considering that the Applicant has suffered a serious disability due to the accident, and which according to the Applicant is a 86% disability [as certified by the Government], we are of

the view that interest of justice would be served if the Applicant is permitted to withdraw 50% of the balance amount of approximately Rs.1.10 Crores, on furnishing an undertaking to this Court that in the event the above Appeal succeeds, the Applicant shall bring back the aforesaid amount or any part thereof, with such rate of interest as this Court may deem fit. As far as the balance 50% amount deposited in this Court is concerned, the same shall be invested in a fixed deposit of any nationalized Bank and shall be renewed from time to time until further orders and subject to outcome of the above Appeal.

7. In a nutshell :-

(i) The Applicant is permitted to withdraw a sum of Rs.57,00,000/- unconditionally, and without furnishing any undertaking.

(ii) The Applicant is permitted to withdraw a sum of Rs.55,00,000/- on the condition that the Applicant furnish an undertaking in terms of what is stated in this order; and

(iii) The balance amount (after the aforesaid withdrawal) shall be invested in a fixed deposit of any nationalized Bank and shall be renewed from time to time until further orders.

8. The above Interim Application is disposed of. 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.

[SOMASEKHAR SUNDARESAN, J.]

[B. P. COLABAWALLA, J.]