IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

49 CIVIL APPLICATION NO. 6635 OF 2024
IN FA/1009/2024

VILAS SHIVAJIRAO JANEPHALKAR
VERSUS
TATA AIG GENERAL INSURANCE COMPANY LTD BRANCE OFFICER 2FLOOR C WING KANDI TOWER AND ANR
...
Advocate for Applicant : Mr. Jadhavar Aashish T.
Advocate for Respondent No.1 : Mr. S.S. Patil h/f Mr.Rohit H. Dahat
...

CORAM : S. G. CHAPALGAONKAR, J.
Dated : 20.01.2025

PER COURT :-

ORDER IN CIVIL APPLICATION FOR WITHDRAWAL :-

1. Heard Mr. Jadhavar, learned Advocate appearing for the applicant and Mr. Patil h/f Mr.Dahat, learned Advocate appearing for respondent No. 1 Insurance Company.

2. The applicant seeks permission to withdraw the amount deposited by the respondent Insurance Company in pursuance of the award passed by the learned Motor Accident Claims Tribunal, Aurangabad in MACP No. 259 of 2020. The applicant suffered injuries in the motor vehicular accident on

07.04.2018. He filed a claim petition for compensation under Section 166 of the Motor Vehicles Act against the owner & insurer of the offending motor vehicle.

3. The Tribunal after evaluation of the evidence granted compensation of Rs. 29,66,098/- alongwith interest @ 6% p.a.

4. Aggrieved by the same, the insurance Company filed this appeal, assailing the judgment and award passed by the tribunal on multiple grounds, Firstly, it is contended that the FIR has been lodged after 46 days of the accident. There is no evidence that would substantiate the involvement of the vehicle insured by the insurance company. As such possibility of false implication cannot be ruled out. It is further contended that although the income tax return which is placed on record shows last year's income of the claimant as Rs. 3,95,080/- and average income as Rs. 3,69,166/- p.a., the learned tribunal erred in fixing income of claimant as Rs. 1,00,000/- p.m. It is contended there is no future loss of earning since he continued to be in practice as lawyer. It is contended that as per pleading in the claim petition it can be inferred that the claimant himself was responsible for the accident or at least a major contributor.

5. Having considered the submissions advanced, apparently, the award passed by the tribunal is in favour of the claimant. It is discernible from record that claimant suffered multiple fractures and therefore he was hospitalized for 14 days. He was treated as OPD patient for about a year. Undisputedly the applicant is law practitioner. The fact remains that due to such injuries his practice must have hampered. What would be the future loss earning can be taken into consideration at the time of final hearing of the appeal. Even all other aspects raised in the appeal can be elaborately considered at the time of final hearing. However, looking to the nature of the injuries suffered it would be appropriate to partly allow application and permit applicant to withdraw an amount of Rs. 6,00,000/- (Rs. Six Lakhs Only) from amount deposited by Insurance Company in this Court. The withdrawal shall be on condition that Claimant shall file usual undertaking to the satisfaction of Registrar, (Judicial) of this Court that he would re-deposit the amount, in case an adverse order is passed in appeal, within a period of eight weeks therefrom, alongwith interest @ 6% p.a.

6. Undertaking to be furnished within a period of four

weeks from today.

7. The balance amount if any, be kept in Fixed Deposit in any Nationalized Bank, to be renewed from time to time, till final disposal of the appeal.

8. The Civil Application stands disposed of.

ORDER IN FIRST APPEAL :-

9. Heard.

10. **Admit**.

11. The appellant to furnish paper book containing pleadings and oral evidence.

12. The print is dispensed with.

13. The parties are at liberty to move this Court for final disposal after aforesaid compliance.

(S. G. CHAPALGAONKAR)
JUDGE

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