**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**96 CIVIL APPLICATION NO. 19 OF 2025
IN FAST/10521/2024**

Shobhabai Gangadhar Tayade
VERSUS
The Senior Divisional Manager, The New India Assurance Company Limited And Ors
...
Advocate for Applicant : Mr. Shah N.S.
Advocate for Respondents : Mr. A S Usmanpuarkar For R/1
Adv S.S. Sarda h/f Mohit R Deshmukh For R/6
...

WITH

CIVIL APPLICATION NO. 3718 OF 2024 IN FAST/10521/2024

CORAM : S. G. CHAPALGAONKAR, J.
Dated : February 07, 2025

ORDER :-

CA for Withdrawal of the Amount :-

1. Heard learned advocates appearing for the respective parties.

2. The original claimant is seeking permission to withdraw the amount deposited by the insurance company.

3. It is informed that this is second round of litigation. Earlier claimant had filed a claim under section 163-A of the Motor Vehicles Act. Award was passed and it was subjected to challenge before this Court. In pursuance to that award, insurance company had deposited the amount. Said amount is now laying with the Tribunal. This Court was pleased to set

aside the award passed under section 163-A of the Act and remanded matter to the Tribunal for fresh consideration under section 166 of the Motor Vehicles Act. Thereafter, claimant had added owner and insurer of another vehicle involved in the accident, as party. Finally, Tribunal passed award holding all the respondents jointly and severally liable to pay the compensation of Rs.2,12,000/- alongwith the interest @ 7.5% p.a. to the claimant. Now, the insurance company has deposited the amount as per the award after adjusting the amount that was deposited in previous award.

4. The claimant was travelling in the insured tempo at the time of accident. Her contention that she was travelling alongwith the goods. Insurer refuted her contentions contending that she was a gratuitous passenger. The Tribunal, after evaluation of the evidence held that the claimant is entitled for Rs.2,12,000/- alongwith interest @ 7.5% p.a.

5. Mr. Usmanpurkar, learned counsel appearing for he appellant/respondent submits that since the claimant was gratuitous passenger in goods carriage, no award should have been passed against the insurance company. However, on perusal of reasoning recorded by the Tribunal, it seems that the Court took holistic view of the matter and taking recourse to the judgment of the Supreme Court observed that, in such case, pay and recover award can be passed and insurer would be entitled to recover the amount. Unfortunately, such observations are not carried forward in the final award. However, looking to the conspectus of the matter, claimant can be permitted to withdraw 50% of the compensation amount

deposited by the insurance company by putting certain conditions. Hence, the order.

<u>ORDER</u>

i. Application is allowed.

ii. The compensation amount deposited by the appellant/ Insurance Company with the Registry of this Court be transmitted to the M.A.C.T. Aurangabad.

iii. The claimant be permitted to withdraw 50% of the compensation amount alongwith interest accrued thereon on furnishing undertaking to the effect that the claimant shall re-deposit amount, in case, adverse order is passed in this appeal.

iv. While disbursing the amount in favour of the claimant, the Tribunal shall consider the amount transferred from this Court as well as deposited in pursuance of the earlier award.

v. In case, respondent no.6 ICICI Insurance Company deposits any amount, that shall be adjusted against the disbursement to be made to the claimant.

vi. CA stands **disposed of.**

Stay application :-

Mr. Usmanpurkar, learned counsel appearing for the appellant undertakes to take steps against unserved respondents within a period of four weeks from today.

(S. G. CHAPALGAONKAR, J.)

...

aaa-