IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.15790 OF 2024
IN
FIRST APPEAL (St.) NO. 12250 OF 2024

Rajendra Vitthalrao Zore ...Applicant

In the matter between

The Manager,
Tata AIG General Insurance Co. Ltd. Pune ...Appellant
Vs.
Rajendra Vitthalrao Zore ...Respondent

Mr. Mahendra Deshmukh for Applicant.
Mr. Devendranath Joshi for Respondents.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
DATED: 30 JANUARY 2025

P.C.

1. This is an application of the respondent / victim in the aforesaid First Appeal filed by the respondent/Insurance Company, assailing the award dated 18 October 2022 passed by the Member of Motor Accident Claims Tribunal, Pune (for short **"the Tribunal"**). By judgment and order impugned in the appeal, the appellant/Insurance Company has been directed to jointly and severally pay compensation of Rs. 72,93,580/- including no fault liability amount with interest @ 9% per annum from the date of filing of the claim petition i.e. from 11 September 2015 till its realization, to the claimant/applicant.

2. In pursuance of an order dated 23 October 2024 passed by this Court, the Insurance Company was directed to deposit the award amount of Rs. 72,93,580/- together with interest @9% per annum from 11 September 2015, till the date of deposit in this Court which was to be made on or before 27 November 2024, as a condition for ad-interim reliefs to be granted of a stay on the execution of the award, of the Tribunal. In pursuance of the said orders passed by this Court, the appellant/Insurance Company has deposited an amount of Rs. 1,33,35,383/- in this Court on 26 November 2024.

3. On the aforesaid backdrop, the present application is filed by the applicant/respondent, that the applicant be permitted, to withdraw the amount as deposited by the appellant/Insurance Company along with accrued interest deposited by the Insurance Company in this Court.

4. We have heard learned counsel for the parties. We have also perused the impugned judgment and order dated 18 October 2022 passed by the Tribunal, and more particularly, the observations in regard to permanent physical disability as made in paragraph 16 as also in paragraph 25. It clearly appears that the applicant has suffered a permanent physical disability to the extent of 95% limbwise and ability of the claimant to do the office sitting work, the permanent physical disability was held to be of 50% (body-wise permanent disability). Considering these established facts, the Tribunal applying the multiplier method has ascertained the loss of income of the applicant/claimant and loss of further income of the applicant at 50%.

Considering that the applicant's age was 38 years and he was earning an income of Rs. 9,65,144/- per annum, at the time of accident, hence, multiplier 15 was made applicable.

5. Mr. Joshi, learned counsel for Insurance Company, however would submit that this is not a case that the applicant is absolutely unable to work and more particularly, as set out in paragraph 16 of the impugned judgment when the Tribunal observes that the applicant need not sit at home and can work to some extent.

6. In our opinion, although such observations are made for the purpose of this application, it cannot be denied that the applicant has suffered a substantial disability, which is on account of the accident in question, considering this position, the compensation as noted by us has been awarded by the Tribunal. *Prima facie*, we find that the observations which are made by the Tribunal would certainly assist the applicant, insofar as the Court's consideration of the interim prayers as made in the application are concerned. In the aforesaid circumstances, although a prayer is made by the applicant for withdrawal of the entire amount as deposited, at this stage of the proceedings, we permit the applicant to withdraw 50% of the amount as deposited by the Insurance Company along with the proportionate accrued interest thereon. Insofar as the balance amount is concerned, we keep open all rights and contentions of the parties.

7. The application accordingly disposed of in terms of the following order:

ORDER

(i) The Registry is directed to permit the applicant to withdraw 50% of Rs. 133,35,383/- as deposited by the respondent alongwith the proportionate accrued interest on such 50% amount, within a period of two weeks from the date a copy of this order is presented before the Registrar, subject to an undertaking to be furnished by the applicant that in the event the appellant/Insurance Company succeeds in the appeal, he shall bring back the amount as withdrawn along with interest.

(ii) All rights and contentions of the parties in respect of the balance amounts are expressly kept open.

8. Interim Application stands disposed of in the aforesaid terms. No costs.

INTERIM APPLICATION NO.11279 OF 2024

9. A co-ordinate Bench of this Court on 23 October 2024 had passed an order directing the appellant/Insurance Company to deposit the award amount in this Court as observed in paragraph 2 of the present order. The

said order shall continue to operate as stay, however, subject to our order in paragraph 7 (supra) permitting partial withdrawal of the amounts as directed.

10. In this view of the matter, the stay application need not be kept pending. It is accordingly disposed of in terms of our aforesaid observations. No cost.

(ADVAIT M. SETHNA, J.) (G. S. KULKARNI, J.)