

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO. 1541 OF 2015
IN
FIRST APPEAL NO. 2465 OF 2007**

Smt. Jyoti @ Jyotirani Pandharinath
Patil & Anr.

... Applicants

V/s.

The Maharashtra State Road Transport
Corporation.

... Respondent

Mr. T. S. Ingale for the applicant.

Mr. C. M. Lokesh i/b G.S. Hegade for the Appellant/respondent.

CORAM : K. K. TATED, J.

DATED : 29/07/2015.

PC.:

. Heard learned Counsel for the parties.

2 This application is preferred by claimants to allow them to withdraw a sum of Rs.10,00,000/- unconditionally from the deposited and invested amount of compensation in the the Motor Accident Claims Tribunal, Sangli in M.A.C.P. No. 145 of 1998.

3 The learned Counsel for the applicant submits that in the accident which occurred on 07.01.1998 Pandharinath, the husband of the applicant no.1 died. On that date, he was 36 years old and he was drawing salary of Rs.4,910/-. He submits that in the claim petition filed by the claimants, the Tribunal after considering the evidence on record held that claimants were entitled to sum of Rs.8,70,000/- with

12% interest per annum by way of compensation.

4 The learned Counsel for the applicants submits that being aggrieved by the Award passed by the Tribunal dated 17.06.2006, the Appellant Maharashtra State Road Transport Corporation filed First Appeal no. 2465 of 2007 which was admitted by this Court. He submits that pursuant to the order dated 09.02.2007, the appellant deposited Rs.16,88,601/- in the Tribunal. He submits that this Court by order dated 26.09.2007 allowed applicants to withdraw sum of Rs.2,00,000/- without security and Rs.2,00,000/- by furnishing security to the satisfaction of the Trial Court.

5 The learned Counsel for the applicants submits that as on today, the applicants have withdrawn only Rs.2,00,000/-. He submits that applicants were not in position to provide any security to the satisfaction of the Trial Court for withdrawal of remaining Rs.2,00,000/-.

6 The learned Counsel for the applicants submits that in view of change of circumstances, the applicants preferred present Civil Application for withdrawal of further amount. He submits that applicant no.1 has to take treatment at Pune in Sancheti Hospital. He submits that applicant no.1 has to spend near about Rs.65,000/- per year for her medical treatment. To that effect, the applicant has placed on record the certificate issued by Doctor from Sancheti Hospital and KEM Hospital, Pune-11. He further submits that applicant no.2 is taking education. At present he is pursuing Diploma Engineering in the

department of E & TC Engineering of Dnyanganga Polytechnic, Pune. He submits that applicants have to spent Rs.30,000/- per year for college fee and Rs.15,000/- towards private tuitions fee. He submits that the applicants required Rs.30,000/- per month for day-to-day expenses also. Therefore, the applicants preferred the present Civil Application for withdrawal of Rs.10,00,000/- In support of these contentions, the learned Counsel for the applicants relies on paragraph 5 of the Civil Application.

7 On the basis of the above mentioned submissions, the learned Counsel for the applicants submits that this Hon'ble Court may be pleased to allow applicants to withdraw sum of Rs.10,00,000/- without furnishing any security. He submits that if Civil Application is not allowed, irreparable loss and injury will be caused to the applicants.

8 On the other hand, the learned Counsel for the appellant/respondent vehemently opposed the present Civil Application. He submits that the First Appeal is already admitted by this Court. He further submits that this Hon'ble Court by order dated 26.09.2007 already allowed applicants to withdraw sum of Rs.2,00,000/- without furnishing any security. He submits that if the entire amount is withdrawn by the applicants without furnishing any security and in case, the appellant succeed in the present First Appeal, it will be very difficult for them to recover the amount from the applicants. He submits that if this Hon'ble Court allowed the applicants to withdraw any amount then applicants may be directed to provide solvent security to the satisfaction of the Trial Court.

9 I heard both the sides at length. It is to be noted that in the present proceeding, in the accident which occurred on 07.01.1998 , the applicant no.1 lost her husband. At that time, the deceased was serving as teacher in Laxmibai Pandurang Patil Vidyalaya and was drawing salary of Rs.4,910/- per month. He was 36 years old. On the basis of documents produced by the applicants from various hospitals, it seems that applicant no.1 is taking medical treatment and for that purpose, she has to spend the amount. Not only that, applicant no.2 is also taking education in Engineering college. For that purpose, they have to spend near about Rs.30,000/- per year towards college fee and also incurred expenses for private tuition as other expenses.

10 Considering the reasons disclosed by the applicants in paragraph 5 of the Civil Application, I am of the opinion that at present in view of change of circumstances, applicants are entitled to withdraw some amount without furnishing any security.

11 Hence, the following order is passed:

a) Applicant No.1 Jyoti @ Jyotirani Pandharinath Patil and Applicant No.2 Shardul Pandharinath Patil both of them are entitled to withdraw sum of Rs.2,50,000/- each without furnishing any security, but subject to the outcome of the First Appeal.

b) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)