

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

**CIVIL APPLICATION NO.845 OF 2015
IN
FIRST APPEAL (ST) NO.33682 OF 2013**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
---	----------------------------

Mr.Jitendra Gaikwad for the applicant

Mr.Rahul Mehta i/b M/s.KMC Legal Venture
for the respondents

CORAM : K.K.TATED, J.
DATED : 05/03/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by claimants for withdrawal of the amount deposited by the appellant Insurance Company before the Tribunal pursuant to the order passed by this court.
- 3 The learned counsel for the applicant submits that in an accident which occurred on 23.9.2010 the claimant no.1 lost her husband, Keshav Ganpat Gajare. He submits that at that time, the deceased was serving as Assistant Sub-Inspector in 'State Reserved Police Force' [for brevity 'S.R.PF'] Group No.VII, Daund and he was getting salary of

Rs.20,929/- per month. He further submits that the deceased was doing agricultural activities and was getting monthly income of Rs.10,000/-. He submits that on the date of accident, the deceased was of 56 years old. He submits that the applicants filed application for compensation u/s.166 of the Motor Vehicles Act, 1988 for Rs.27.0 lacs. He submits that the trial court considering the evidence on record and the salary slips placed on record by the claimant awarded compensation of Rs.11,96,000/- with 9% interest p.a. from the date of claim petition till the date of realisation.

4 The learned counsel for the applicant submits that applicant no.1 is household wife. She requires amount for maintaining herself as well as her two sons. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the applicants to withdraw the amount deposited by the appellant Insurance Company in the Tribunal.

5 On the other hand, the learned counsel for the appellant Insurance Company vehemently opposed the present Civil Application. He submits that the Tribunal failed to consider the contributory negligence at the time of awarding compensation. He further submits that the Tribunal has awarded compensation on higher side. He submits that on these two points, they have good chance of success

in the present First Appeal. He submits that if the amount is withdrawn by the claimants then it will be difficult for them to recover the same in case they succeed in the First Appeal. He further submits that if this court allows the applicant to withdraw the amount deposited by them, in that case the claimants must provide solvent security and or bank guarantee for withdrawal of the amount.

6 I have heard both the sides at length.

7 It is to be noted that in the present proceeding, the deceased was serving as Assistant Sub-Inspector in 'State Reserved Police Force' [for brevity 'S.R.P.F.'] Group No.VII, Daund. On the date of accident, he was 56 years old and was getting salary of Rs.20929/- p.m. The applicant no.1 claimant no.1 is household wife. She has to maintain herself as well as her two sons.

8 Considering the reasons disclosed by the applicant in Civil Application, I am satisfied that the Applicant has made out a case for allowing them to withdraw some amount at present without furnishing any security subject to outcome of the present First Appeal. Hence, following order:

a) Applicant no.1 claimant no.1 Lata Keshav Gajare is entitled to withdraw sum of Rs.7.0 lacs

with accrued interest, without furnishing any security subject to outcome of the present First Appeal.

b) Applicant no.2 claimant no.2 Manoj Keshav Gajare is permitted to withdraw sum of Rs.50,000/- with accrued interest, without furnishing any security subject to outcome of the present First Appeal.

c) Applicant no.3 claimant no.3 Amol Keshav Gajare is permitted to withdraw sum of Rs.50,000/- with accrued interest, without furnishing any security subject to outcome of the present First Appeal.

d) Tribunal is directed to invest remaining amount in fixed deposit of any nationalised bank initially for a period of one year and same be continued till the hearing and final disposal of the First Appeal.

e) Civil Application is disposed of accordingly.

(K.K.TATED, J.)