

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

**CIVIL APPLICATION NO.3017 OF 2014
IN
FIRST APPEAL NO.326 OF 2015**

Smt.Alka Shahaji Chondhe and Ors. .. Applicants

vs.

The New India Assurance Co.Ltd. .. Respondents

Mr.J.S.Kapare for the applicants

Mr.S.M.Dange for the appellant

CORAM : K.K.TATED, J.
DATED : 26/06/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by claimant for withdrawal of the amount deposited by the Appellant Insurance Company pursuant to the order passed by this court.
- 3 The learned counsel for the applicant submits that in an accident which occurred on 16.1.93 the applicant no.1 lost her husband, Shahaji Waman Chondhe. At the time of accident, he was 54 years old. His total annual income was amount of Rs.1,20,000/-. Hence, the claimants filed application under section 166 of the Motor Vehicles Act for compensation of Rs.20.0 lacs. He submits that the Tribunal considering

the evidence on record awarded sum of Rs.8,63,000 only. He submits that applicant nos.1 and 2 are taking education. Applicant nos.4 and 5 are minors. They are also taking education. He submits that applicant being a household wife does not have any source of income at present. He submits that in the interest of justice this Hon'ble Court be pleased to allow the applicant to withdraw the amount for the welfare of two minor children and other two children who are taking education. He submits that if present Civil Application is not allowed, irreparable loss and injury will be caused to the applicant.

4 On the other hand, the learned counsel for the appellant Insurance Company vehemently opposed the present Civil Application. He submits that the Tribunal erred in coming to the conclusion that the Insurance Company is liable to pay any compensation. He submits that on the date of accident, out of two, one vehicle was not insured with them. He further submits that even the claimant has not placed on record any documentary evidence to show that another vehicle was duly insured with the Insurance Company. Hence, they are not liable to pay any compensation. He further submits that if the applicant withdraws the entire amount deposited by them, nothing will survive in the present proceeding. He further submits that if they succeed in the present proceeding, it will be very difficult for them to recover the amount withdrawn by the claimants. He submits that if this court allows the applicant to withdraw the amount then in that case applicant be directed to provide solvent security and or bank guarantee as condition precedent.

5 I have heard both the sides at length. In the present proceeding, in an accident which occurred on 16.1.1993 applicant no.1 lost her

husband and applicant nos.2 to 5 lost their father. On the date of accident, the deceased was 54 years old and was earning nearabout Rs.1,20,000/- p.a. Considering the fact that applicant no.1 is household wife and applicant nos.2 and 3 are taking education and applicant nos. 4 and 5 are minors, I am of the opinion that at present, applicant is entitled to withdraw some amount. Hence, following order:

- a) Applicant no.1, Smt.Alka Shahaji Chondhe is permitted to withdraw sum of Rs.3.0 lacs with accrued interest without furnishing any security but subject to outcome of the First Appeal.
- b) Applicant no.2, Miss. Anita Shahaji Chondhe is entitled to withdraw sum of Rs.50,000/- with accrued interest without furnishing any security.
- c) Liberty granted to the remaining applicant's nos.3, 4 and 5 to prefer appropriate application if they so desire for withdrawal of the amount as and when they attain majority and that application will be decided on its own merits.
- d) Civil application stands disposed off accordingly.

(K.K.TATED, J.)