

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

**CIVIL APPLICATION NO.2182 OF 2014
IN
FIRST APPEAL NO.844 OF 2013**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.M.S.Kundu for the applicant

Mr.S.R.Singh i/b M/s.S.R.Singh and Co. for
the respondent nos.1 to 3

CORAM : K.K.TATED, J.
DATED : 17/06/2015

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 in the Tribunal.
- 3 The learned counsel for the applicant submits that in an accident which occurred on 12.8.2009 applicant no.1 lost her husband, Chandrakant Chaphekar. At the time of accident, he was 62 years old. He submits that deceased was earning Rs.40,000/- per month. On the basis of his earning, they filed application under section 166 of the Motor Vehicle Act for compensation to the tune

of Rs.10.0 lacs. He submits that the Tribunal considering the income of the deceased of Rs.10,000/- per month awarded only sum of Rs.6,49,924/- with 7% interest p.a.. He submits that applicant no.1 is household wife. He does not have any source of income after the death of husband. Hence, she has filed present Civil Application for withdrawal of the amount.

4 The learned counsel for the appellant Insurance Company vehemently opposed the present Civil Application. He submits that Insurance Company has specifically raised objection about violation of terms and conditions of Insurance Company. He submits that driver of the offending vehicle was not holding valid licence at the time of accident. To that effect, he examined three witnesses. Out of that, one was from RTO's office. He further submits that even the Tribunal has considered income of the deceased of Rs.10,000/- on higher side. He submits that claimant has not placed on record any documentary evidence to show that deceased was even earning about Rs.10,000/- per month. Hence, award passed by Trial Court was on higher side. He submits that if entire amount is withdrawn by the claimants, nothing will survive in the present proceeding. He submits that if this court allows

the applicant to withdraw the amount, in that case, they may be directed to furnish solvent security to the satisfaction of the Trial Court.

5 I have heard both the sides at length. In the present proceeding, in an accident which occurred on 12.8.2009 applicant no.1 lost her husband who was 62 years old. At that time he was earning Rs.40,000/- per month. Considering the fact that applicant no.1 has no source of income, I am satisfied that the applicant has made out a case for allowing them to withdraw some amount. Hence, following order:

- a) Applicants, Kishori (Rohini) Chandrakant Chaphekar, Vaibhav Chandrakant Chaphekar and Ankur Chandrakant Chaphekar are entitled to withdraw 10% each of total compensation without furnishing any security but subject to outcome of First Appeal.
- b) 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.
- c) Civil application stands disposed off accordingly.

(K.K.TATED, J.)