

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

**CIVIL APPLICATION NO.4349 OF 2014
IN
FIRST APPEAL NO.69 OF 2015**

Nandabai Anand Thorat and Ors. .. Applicants

vs.

Jagannath Shankar Kadam and Anr. .. Appellants

Mr.D.S.Mhaispurkar i/b Mr.A.R.Kapadnis for the applicants

Mr.S.R.Ganbavale i/b Mr.S.H.Yadav for the appellants

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

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by claimants for withdrawal of the amount deposited by the appellants in the Tribunal pursuant to the order passed by this court.
- 3 In the present proceeding, in an accident which occurred on 21.2.2010 Ananda Baburao Thorat died. Hence, the applicants claimants filed application under section 166 of the Motor Vehicles Act for compensation of Rs.2,50,000/-.

4 Though the respondents were duly served, no one appeared on behalf of them before the Tribunal. Hence, matter proceed without written statement. Considering the evidence on record, Tribunal held that the applicants claimants are entitled sum of Rs.3,61,946/- with 6% interest p.a. by way of compensation.

5 The learned counsel for the applicant submits that the applicant lost her husband in an accident which occurred on 21.2.2010. He submits that applicant does not have any source of income at present. He submits that applicants claimants nos.2 and 3 are minors. Applicant has to look after both the minors. He further submits that applicant performed the marriage of claimant no.4, Manisha Ananda Thorat during this period. He submits that it is very difficult for applicant no.1 to look after both her minor children for want of financial assistance. He submits that both the minors are taking education. Therefore the applicant requires the amount deposited by the appellant in the Trial Court. He submits that if Civil Application is not allowed, irreparable loss and injury will be caused to the applicant.

6 On the other hand, the learned counsel for the appellant vehemently opposed the present Civil Application. He submits that applicants claimants have played fraud in the Trial Court and obtained impugned order dt.4.1.2012. He submits that in the judgment, the Trial Court has considered the age of deceased only 45 years whereas the age of the deceased on the date of accident was 62 years. He further submits that applicant no.1 Nandabai Ananda Thorat is the 2nd wife of deceased. He submits that 1st wife of deceased is alive. She was not

made party in the present proceeding. Hence, applicants are not entitled compensation in the present proceeding. He further submits that if amount is withdrawn by the claimants, it will be very difficult for them to recover the same if they succeed in the present First Appeal. He further submits that if this Hon'ble court allows the applicant to withdraw the amount in that case, the claimants be directed to provide bank guarantee and or solvent security to the satisfaction of the Trial Court.

7 I have heard both the sides at length. In the present proceeding, claimant no.1 lost her husband in an accident which occurred on 21.2.2010. Applicant no.1/claimant no.1 has to look after her two minor children who are taking education. Applicant no.1 does not have any source of income at present.

8 In the present proceeding this Hon'ble Court by order dated 12.4.2013 directed appellant to deposit 50% amount along with interest and other charges in the Tribunal.

9 Considering the fact that applicant no.1 does not have any source of income and the applicant nos.2 and 3 are minors, I am of the opinion that they are entitled to withdraw the amount subject to outcome of the present First Appeal. The objection raised by the appellant about 2nd wife of deceased, age of the deceased and other contentions can be considered only at the time of final hearing because when the judgment and award was passed by the Tribunal, no one appeared on behalf of appellant.

10 Considering the submissions made by the learned counsel for the applicant and the averments made in Civil Application, I am satisfied that the applicant has made out a case for allowing Civil Application. Hence, following order:

- A) Applicant no.1, Nandabai Ananda Thorat is entitled to withdraw sum of Rs.1,50,000/- without furnishing any security but subject to outcome of the present 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) Liberty granted to claimant nos.2 and 3 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 is disposed of accordingly.

(K.K.TATED, J.)