

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

**CIVIL APPLICATION NO.854 OF 2015
IN
FIRST APPEAL NO.453 OF 2011**

Surekha Balu Dange and Ors. .. Applicants

vs.

Oriental Insurance Co. Ltd., Pune and Ors. .. Respondents

Mr.J.S.Kapre for the applicant

Mrs.Anita Agarwal for the respondent

**CORAM : K.K.TATED, J.
DATED : 27/03/2015**

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. The learned counsel for the claimant submits that till today they withdrew sum of Rs.14.0 lacs as stated in paragraph 5 of the Civil Application.

3 The learned counsel for the applicant submits that in an accident which occurred on 06.03.1996, applicant no.1 lost her husband, Balu

Dange. He submits that on the date of accident, he was 33 years old. He submits that the deceased was doing transport business as well as agricultural activities. He submits that the deceased was having annual income of Rs.1,61,708/- and he has placed on record income tax return of Rs.1,65,210/- for the financial year 1996-97. He submits that considering the income of the deceased, the applicants claimants filed application under section 166 of the Motor Vehicles Act for compensation of Rs.20 lacs. He submits that the Tribunal considering the evidence on record held that claimants are entitled sum of Rs.21.0 lacs by way of compensation with 8% interest.

4 The learned counsel for the applicant submits that this court by order dated 14.10.2011 in Civil Application No.849 of 2011 granted liberty to the applicant to move for withdrawal of the amount for the purpose of marriage expenses of daughter. He submits that marriage of the applicant no.3 took place on 10.12.2014. He submits that though the Civil Application was filed for marriage expenses of applicant no.3, present Civil Application reached for hearing today i.e. after more than four months. He submits that the applicant requires the amount for payment of the expenses which they incurred for applicant no.3's marriage. He submits that in the interest of Justice this Hon'ble Court be pleased to allow the applicant to withdraw sum of Rs.10.0 lacs. He submits that if application is not allowed, irreparable loss and injury will be caused to the applicant.

5 On the other hand, the learned counsel for the appellant Insurance Company vehemently opposed the present Civil Application.

He submits that the Tribunal has awarded compensation on the higher side. He submits that the applicants claimants failed to produce on record cogent evidence to show that the deceased was earning more than Rs.15,000/- per month. He submits that even the tribunal has not considered contributory negligence at the time of deciding quantum of compensation. He submits that they have good chance of success in the present First Appeal. He submits that if applicant has withdrawn the amount deposited by them, it will be very difficult for them to recover the same in case they succeed in the present First Appeal. Therefore, Civil Application be dismissed with costs.

6 I have heard both the sides at length. In the present proceeding this court by order dated 14.10.2011 in Civil Application No.849 of 2011 granting liberty to the applicant to move for withdrawal of the amount at the time of marriage of her daughter.

7 The learned counsel for the applicant placed on record invitation card i.e. at Exhibit B. Though the marriage was performed on 10.12.2014 but the applicant no.1 and 5 had to bear those expenses. Considering these facts and as the applicant has already withdrawn sum of Rs.14.0 lacs, I am of the opinion that the applicant is entitled to withdraw some amount. Hence, following order:

- a) Applicant no.1, Surekha Balu Dange is entitled to withdraw sum of Rs.1.0 lac without furnishing any security but subject to outcome of the First Appeal.

- b) Applicant no.3, Pooja Balu Dange is entitled to withdraw sum of Rs.3.0 lacs without furnishing any security but subject to outcome of the First Appeal.
- c) Applicant no.5, Reaubai Maruti Dange is entitled to withdraw sum of Rs.1.0 lac without furnishing any security but subject to outcome of the First Appeal.
- d) Civil Application stands disposed off accordingly.

(K.K.TATED, J.)