

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

**CIVIL APPLICATION NO.2416 OF 2015
IN
FIRST APPEAL NO.891 OF 2013**

Mr. Pareshbhai H. Joshi & Anr. Applicants

In the matter between

Shri. Rajeshbhai M. Halpati & Anr. ... Appellants
vs.

Mr. Pareshbhai H. Joshi & Anr. Respondents

Ms. Leela D. Malu i/by Leela D. Malu & Associates for the applicants.

Ms. Gauraj Shah i/by B.H. Bhalwar, Advocate for Respondent no. 1 and 2.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 29th April, 2016

P.C.

1 The applicants herein are the respondents to the appeal and the original claimants. They have filed the present civil application for withdrawal of the amount deposited by the respondents in this court at the time of admission of the appeal.

2 The appeal arises out of the award granting compensation to the applicants on account of death of their son in a vehicular accident. Respondent no.2 the owner of the vehicle disputes that his vehicle was involved in the accident. According to him, the deceased while overtaking another vehicle lost control over his own motorcycle and fell down near the construction site of a bridge and sustained injuries.

3 The applicants examined two witnesses. One of them was applicant no.1, who had admittedly not witnessed the accident. Therefore his evidence on actual occurrence of the accident is of not help. The second witness of the applicants was one Suresh Halpati who deposed that he saw a dead body at the site of the accident and some persons informed him that the vehicle of the respondents was involved in the accident. Therefore his evidence is hearsay evidence. The respondents on the other hand examined respondent no.1, who is the driver of respondent no.2. He was at the steering wheel of the vehicle at the relevant time. He deposed that his vehicle was being towed by another vehicle bearing registration no.GJ-15-UU-5222 and that the drivers of both vehicles i.e. towing vehicle and the vehicle of respondent no.2 had not seen the accident.

4 Ms. Shah, the learned advocate for the respondents submits that the two vehicles had, in fact, gone ahead and had been parked on the left side of the road, when the accident had

taken place. Both the drivers after hearing the sound of accident had gone to the place of accident and learnt about the accident. But perusal of the cross-examination of respondent no.1 shows that this story was made out by him for the first time in the claim petition. No such claim was made by him when he was being prosecuted for the vehicular accident. It was not his defence there that his vehicle was being towed by another vehicle. Also there is nothing in the evidence to indicate that the two vehicles had crossed the spot of the accident and moved ahead when the accident took place. Since this application is to be decided on a prima facie view of the matter and since the story put-up by the respondents is not prima facie believable, in my opinion, the applicants may be permitted to withdraw the amount of Rs.1,90,000/- deposited by the respondents in the court, on undertaking that they will bring back the amount in the event the respondents succeed in the First Appeal. The Civil Application is therefore allowed, accordingly. The applicants are at liberty to withdraw the amount after filing the undertaking in writing.

(Smt. R.P. SondurBaldota, J.)