

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

**CIVIL APPLICATION NO.1715 OF 2016
IN
FIRST APPEAL STAMP NO.33399 OF 2015**

Smt. Bharati Ashok Bhagat and others .. Applicants

IN THE MATTER BETWEEN

The New India Assurance Co. Ltd. .. Appellant

Versus

Smt. Bharati Ashok Bhagat and others .. Respondents

Mr. V. B. Tapkir for the Applicants.

Mr. D. S. Joshi for the original Appellant.

Mr. V. S. Tadake for the Respondent No.7.

CORAM : R.M. SAVANT, J.

DATE : 20th JULY 2016

PC.

1 The above Civil Application has been filed for withdrawal of the amount deposited by the original Appellant i.e. Insurance Company in the MACT, Pune. The amount is in the sum of Rs.97,68,036/-. The Applicants are the wife, children and parents of the deceased. The accident has taken place on account of the head on collision between the vehicle driven by the deceased and the vehicle coming from the other side. Both were light motor vehicles. It seems that the MACT has recorded a

finding that it is on account of the rash and negligent driving of the Respondent No.6 that the accident has occurred. Since the vehicle was at the relevant time insured with the Appellant/Insurance Company that the Insurance Company was made liable for the payment of compensation. In so far as the Applicant No.1 is concerned, she is the wife, Applicant No.2 is son of the deceased who is studying in the 8th standard and Applicant No.3 is the daughter studying in 3rd standard. The parents of the deceased who are the Applicant Nos.4 and 5 are more than 60 years of age. The challenge to the judgment and order of the MACT is inter-alia on two grounds that there was contributory negligence on the part of the deceased and that the income of the deceased has not been properly calculated. As indicated above, the Trial Court has already recorded a finding that it is on account of the negligence of the Respondent No.6 that the accident has occurred as the Respondent No.6 had driven his vehicle on the extreme right side of the road which was the wrong side.

2 In my view, therefore, having regard to the facts as aforestated, it would be just and proper to permit the Applicants to withdraw an amount of Rs.30,00,000/-. This withdrawal is permitted in the context of the directions as contained in clauses (3) and (4) of the operative part of the impugned judgment and order of the MACT. Even if the aforesaid amount of Rs.30,00,000/- is allowed to be withdrawn, the

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balance remaining is sufficient buffer for the Insurance Company in the event it succeeds in the above First Appeal. The Civil Application is accordingly allowed to the aforesaid extent and is disposed of. The Applicants would be at liberty to file a fresh application for withdrawal of the interest after lapse of sometime.

[R.M. SAVANT, J]