IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3181 OF 2015
IN
FIRST APPEAL NO.1035 OF 2013

Miss. Nikita Nilesh Kothari and others .. Applicants

IN THE MATTER BETWEEN
IIFCO-TOKIO General Insurance Co. .. Appellant
Versus
Miss. Nikita Nilesh Kothari and others .. Respondents

Mr. A. M. Gokhale for the Applicants.
Mr. A. S. Vidyarthi for the Respondents.

CORAM : R.M. SAVANT, J.
DATE : 11th AUGUST 2016

P.C.

1 The above Civil Application has been filed for withdrawal of the amount deposited by the Insurance Company i.e. the original Appellant in the MACT, Thane. The Applicants are the daughters of the deceased Priti Kothari and her husband Nilesh Kothari both of whom expired in the accident. It seems that the Applicants were minors when the accident took place and the Applicant No.3 is pursuing studies in Architecture. The judgment and order of the MACT, Thane is challenged by the Insurance Company on quantum and especially on the ground of

contributory negligence of the auto rickshaw driver of the auto rickshaw in which deceased were travelling. At the trial stage, the finding that is recorded is against the driver of the auto rickshaw in which the deceased were travelling other than the insured vehicle. The Trial Court however deemed it appropriate to Award compensation to the tune of Rs.14,81,000/- as the principal amount with 7% interest from the date of the filing of the application till realisation. The said total amount comes to around Rs.19,00,000/- approximately. In my view, it would be just and proper to permit the Applicants to withdraw an amount of Rs.8,00,000/- with commensurate interest out of the amount deposited by the Insurance Company in the MACT, Thane and keep an amount of Rs.2,00,000/- in a fixed deposit of a Nationalized Bank in the name of the Applicant No.3 for two years and an amount of Rs.1,00,000/- each in the name of the Applicant Nos.1 and 2 likewise. The balance remaining would be a sufficient buffer if the Insurance Company ultimately succeeds in the Appeal. The balance remaining after withdrawal to be invested by the MACT, Thane in a fixed deposit of a Nationalized Bank initially for a period of two years and thereafter renewed for appropriate periods as deemed fit. Needless to state that the withdrawal is subject to the result of the First Appeal. The Civil Application is accordingly disposed of.

[R.M. SAVANT, J]