

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

**CIVIL APPLICATION NO. 433 OF 2016
IN
FIRST APPEAL NO. (STAMP) 34410 OF 2012**

Smt. Janet Ravi Thomas and others ... Applicants
V/s.
The Manager, Brihan Mumbai Electric
Supply & Transport Undertaking ... Respondents

Mr. Madhukar Kalzunkar Advocate with Ms. Namita Mestry
Advocate i/b Navdeep Vora & Associates
Advocate for Applicant/Appellant
Mr. Nikhil Mehta Advocate i/b KMC Legal Venture,
Advocate for respondent nos. 1 to 4

**CORAM : K. K. TATED, J.
DATED : 18/02/2016**

PC.:

Heard learned counsel for the parties.

2) This application is preferred by claimants for withdrawal of the amount deposited by the appellant in Tribunal. Learned counsel for the applicant submits that Trial Court by Judgment and Award dated 02/07/2012 held that applicants are entitled to sum of Rs. 31,73,150/- with 7.5 % interest per annum by way of compensation.

3) Learned counsel for the applicant submits that that in an accident which occurred on 03/10/2015, applicant no. 1 lost her husband and applicant nos. 2, 3 & 4 their father. At that time, the deceased was 40

years old and he was working as a Senior Engineer in Hoficons Infotech and Industrial Services Private Ltd. That time he was drawing salary of Rs. 27,500/-. Learned counsel for the applicant submits that applicant requires the amount to maintain her children as well as to bear their expenses and their education. He further submits that applicant no. 4, daughter aged 23 years is suffering from cancer being stage 2-A. He further submits that applicant no. 2 is not married. Hence, she requires the amount for her marriage. In support of this contention, learned counsel for the applicant relies on para 7 of Civil Application. He submits that this Hon'ble Court was pleased to allow the applicants to withdraw the amount deposited by appellant in Tribunal.

4) On the other hand, learned counsel appearing on behalf of appellant vehemently opposed the present Civil Application. He submits that the amount awarded by the Tribunal by way of compensation is on higher side. He submits that in the present proceedings, the Tribunal has not considered the fact about the negligence on the part of the deceased at the time of awarding the compensation. He further submits that on the date of incident, deceased was 40 years old. Considering the age of the deceased, the Tribunal has taken multiplier on higher side. He submits that if appellants succeeds in the present proceedings, it will be very difficult

for them to recover the amount from the claimants. He submits that in the interest of justice, this Hon'ble Court be pleased to dismiss the present civil application. He submits that if this Hon'ble Court allows the applicant to withdraw the amount awarded by the Tribunal, in that case, this Court be pleased to direct the applicant to provide bank guarantee for withdrawal of the amount.

5) Heard learned counsel for the parties.

6) It is to be noted that in the present proceedings, on the date of accident the deceased was 40 years old. He was working as Senior Engineer in Private Limited Company. He was drawing salary of Rs. 27,500/-. Applicant in para 7 of Civil Application stated that her daughter is suffering from cancer. She requires amount for her treatment. It is also stated by the applicant no. 1 that one of her daughter is of marriageable age. She requires the amount for marriage expenses. It is also stated in the application that applicant no. 1, mother of other applicants does not have any source of income and she has to maintain her three children and to bear their expenses towards day to day necessity as well educational expenses.

7) Considering these facts and reasons given by the Tribunal at the time of awarding the sum of Rs. 31,73,150/- by way of compensation, I am of the opinion that all applicants can withdraw 50% of the entire

amount in equal proportionate as all of them are major as on today.

8) Hence, following order.

(i) Applicants/original claimants are permitted to withdraw 50% compensation amount deposited by appellant in equal share without furnishing any security but subject to the outcome of the first appeal.

(ii) Remaining 50% amount can be withdrawn by the applicant/claimant in equal share by furnishing bank guarantee of any nationalized bank to the satisfaction of the Trial Court within 8 weeks from today.

(iii) The Tribunal is directed to invest the remaining amount, if any, in fixed deposit in any nationalized bank, initially for a period of one year and same to be continued till hearing and final disposal of first appeal.

(iv) Civil Application stands disposed of.

(K.K.TATED, J.)