

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2561 OF 2016

IN

FIRST APPEAL NO.582 OF 2012

Mr. Ramchandra B. Kate and another .. Applicants

IN THE MATTER BETWEEN

Maharashtra State Road Transport Corporation .. Appellant

Versus

Smt. Sakshi Rajesh Mahale and others .. Respondents

Mr. P. D. Patil for the Applicant/original Respondent Nos.3 and 4.

Mr. S. S. Vidyarthi for the Respondent Nos.1 and 2.

Mr. C. M. Lokesh for the MSRTC/original Appellant.

CORAM : R.M. SAVANT, J.

DATE : 16th JUNE 2016

PC.

1. The above Civil Application has been filed by the Respondent Nos.3 and 4 who are the parents of the deceased. The said application is also supported by the original Respondent No.1 who is the wife of the deceased. The Applicant seeks withdrawal of a further amount from the amount deposited by the Appellant i.e. MSRTC in the Trial Court. The ground made out is that the Applicant No.1 i.e. the original Respondent

No.3 is about 72 years of age and the Respondent No.4 i.e. Applicant No.2 is about 70 years of age and require finance for their medical treatment. The Learned Counsel for the Applicants Mr. P. D. Patil seeks to draw this Court's attention to the medical papers of the Applicant Nos.1 and 2. By order dated 26.07.2013 a Learned Single Judge of this Court had permitted the Applicants and the Respondent No.1 to withdraw an amount of Rs.2,00,000/- each i.e. an amount of Rs.6,00,000/- out of Rs.18,31,961/- deposited by the MSRTC. The Applicants as well as the Respondent No.1 who is their widowed daughter-in-law have accordingly withdrawn an amount of Rs.6,00,000/- in total from the amount deposited by the MSRTC. In so far as the First Appeal is concerned, the case of the MSRTC i.e. the Appellant is of contributory negligence on the part of the deceased. In so far as the said aspect is concerned, the Learned Counsel Mr. S. S. Vidyarthi appearing for the Respondent No.1 i.e. the widow states that there is hardly any evidence to justify the ground of contributory negligence. In the event, contributory negligence of the deceased is proved, then what would happen is that the compensation awarded would have to be modified. In my view, having regard to the fact that the Applicants are more than 70 years of age as also the Respondent No.1 being their widowed daughter-in-law who at present has no source of income, it would be just and proper if the Applicants i.e. the

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Respondent Nos.3 and 4 and the Respondent No.1 are allowed to withdraw a further amount of Rs.2,00,000/- each from the balance remaining of Rs.12,31,961/-. This is in the context of the fact that the principal amount is Rs.17,43,000/- and therefore even if the amount is to be reduced then there is a buffer of about Rs.6,00,000/-. The Civil Application is accordingly allowed to the extent mentioned hereinabove. It is made clear that the said withdrawal would be without security. The Civil Application is accordingly disposed of.

[R.M. SAVANT, J]