

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3857 OF 2016
IN
FIRST APPEAL NO. 316 OF 2016**

Smt. Gayatri Devi Hridayanarayan Dubey & Ors. ... **Applicants**
Versus
M/s.Oriental Insurance Co. Ltd. ... **Respondent**

Mr.Umeshchandra S. Pandey for Applicants.
Ms.Rupam Ghosh for Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 21ST OCTOBER, 2016.

P.C. :

1] This application is preferred by the legal heirs of the deceased, who are the original claimants, for withdrawal of the entire compensation amount as deposited by the Insurance Company in the tribunal in pursuance of the award dated 9th February, 2015 passed by Motor Accident Claim Tribunal, Thane in MACP No.706 of 2011.

2] It is submitted by the applicants that on account of the untimely accidental death of the deceased they have lost their only source of the income and they have to fund for themselves. Therefore, they need some amount for their maintenance and also for the education of applicant no.2.

3] The learned counsel for the respondent Insurance Company has resisted this application on three counts.

a) In the first place, it submitted that the accident has occurred in the business premises and therefore, it being private place,

Insurance Company is not liable to pay any amount of compensation.

- b) Secondly, it is submitted that there was a breach on part of the Insurance Company as the deceased was not having valid licence for driving heavy goods vehicle.
- c) Thirdly, it is submitted that the accident has occurred due to sole negligence of the deceased and there is no proper apprehension of evidence on all these aspects by the tribunal.

4] Having given my thoughtful consideration to the submissions advanced by the learned counsel for the applicants and respondent, in my considered opinion at this stage, it would not be proper to allow the applicants to withdraw the entire amount of compensation as all the findings given by the tribunal are subject to assessment of this Court it being the first appeal.

5] However, taking into consideration the fact that appeal is not likely to be heard immediately, some provisions needs to be made for the applicants maintenance and education of applicant no.2. Hence, only in the interest of justice the applicants are permitted to withdraw the amount of Rs.5,00,000/- on furnishing the undertaking that in case the appeal goes against them, they will refund the entire amount of compensation alongwith interest thereon.

6] The application is disposed of accordingly.

(DR.SHALINI PHANSALKAR-JOSHI, J.)