IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3964 OF 2013
IN
FIRST APPEAL NO.96 OF 2013

Ashok Vithalrao Jadhav and ors. : Applicants.

In the matter between

National Insurance Co. Ltd.
Through its Mumbai Regional Office : Appellant.
Versus
Ashok Vithalrao Jadhav and ors. : Respondents.

Mr. Milind Deshpande for the Applicants/original Respondents.
Mr. A B Gatne for the original Appellant.

CORAM : R. M. SAVANT, J.
DATE : 22nd June 2016

P.C.

1 The above Civil Application has been filed by the Applicants seeking permission to withdrawn the principal amount of Rs.66,90,000/- with interest deposited in the Motor Accident Claims Tribunal, Solapur.

2 The Applicant Nos.1 to 3 are the original Respondent Nos.1 to 3 to Appeal filed by the Insurance Company who is the original Appellant, who are the original claimants. The withdrawal sought is on the ground that deceased was the sole earning member of the family and that the Applicant Nos.1 and 2, who are the parents of the deceased, are old and are suffering from various ailments for which they require medical attention. It is the case of the

Applicants that they have to incur expenditure for the same. By the order dated 10/10/2012 passed in the above First Appeal, the Applicants were permitted to withdraw the amount of Rs.1,00,000/- each from the amount deposited by the Insurance Company. The amount deposited by the Insurance Company is the amount of Rs.83,45,707/- which includes the principal amount and the interest thereon. The principal amount is Rs.66,90,000/-. The amount of Rs.1,00,000/- each which was permitted to be withdrawn has also not been withdrawn by the Applicant Nos.1 and 2.

3 The learned counsel appearing for the Insurance Company Shri Atul Gatne would submit that the case of the Appellant – Insurance Company is that of contributory negligence of the deceased. It is also the case of the Insurance Company that the yearly income taken into consideration by the MACT, Solapur is on the higher side. It is the submission of the learned counsel for the Appellant Shri Gatne that ultimately if the Insurance Company succeeds in the Appeal, the liability of the Insurance Company would be less than Rs.20,00,000/- i.e. in the region of Rs.18,00,000/- at the highest.

4 In my view, considering the case made out by the Applicants in the above Civil Application, the interest of justice would be met if apart from the amount of Rs.1,00,000/-each which was allowed to be withdrawn by the Applicant Nos.1 and 2 by the order dated 10/10/2012, the amount of

Rs.8,00,000/- each is permitted to be withdrawn by the Applicant Nos.1 and 2. The same would make the total of Rs.18,00,000/-. Hence even if the Insurance Company would succeed then the interest of the Insurance Company would be adequately protected, if the withdrawal is restricted to Rs.18,00,000/-. Hence the above Civil Application is allowed to the extent of permitting the Applicant Nos.1 and 2 to withdraw Rs.8,00,000/- each making the total withdrawal to be Rs.18,00,000/- without security. This would include the amount of Rs.1,00,000/- each which has been allowed to be withdrawn by the order dated 10/10/2012. The Trial Court is directed to invest the balance in a Fixed Deposit of a Nationalized Bank initially for a period of two years to be renewed thereafter for an appropriate period as the learned Registrar of the Trial Court deems it appropriate. The above Civil Application is accordingly disposed of. Issuance of certified copy of the instant order is expedited.

[R.M.SAVANT, J]