

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

**CIVIL APPLICATION NO. 4274 OF 2015
IN
FIRST APPEAL NO. 227 OF 2012**

Ramdas Tukaram Patil & Anr.	... Applicants
V/s.	
Smt. Lilabai Mahesh Patil & Ors.	... Respondents.

Mr. Pritesh Bohade for the Applicant.
Mr. S. M. Dange for the Appellant.
Mr. S.D. Shinde for Respondent No.6.

**CORAM : K. K. TATED, J.
DATED : 16/02/2016**

PC.:

. Heard learned Counsel for the parties.

2 Though the respondent nos. 1 & 2 are duly served, no one appeared on behalf of them, when the matter called out.

3 The learned Counsel for the applicants submits that he served the copy of present Civil Application on Respondent Nos. 1 and 2's Advocate Mr. S.R. Waghmare. He undertakes to file affidavit of service to that effect within one week from today. Statement is accepted.

4 This application is preferred by original claimants Nos. 3 and 4, parents of the deceased for withdrawal of amount deposited by the Appellant Insurance Company.

5 The learned Counsel for the applicants submits that in accident

which occurred on 29.07.2005, they lost their son Mahesh Patil. At that time, the deceased was working with Sanap Tours & Travels and was earning Rs.3,500/- per month. Hence, they filed claim petition under Section 166 of M.V. Act alongwith widow of the deceased and their grandson for compensation of Rs.6 lacs. He submits that the Tribunal after considering the evidence on record held that claimants are entitled to sum of Rs.3,58,000/- with 9% interest per annum from 23rd August 2010 till realisation. He submits that Trial Court held that the widow and grandson are entitled to 30% each and applicants are entitled to 20% each from the compensation. He submits that the daughter-in-law and grandson have preferred Civil Application No. 1910 of 2013 for withdrawal of amount. That application was allowed by this Court (Coram: S.S. Shinde, J) dated 27.09.2013 permitting the Respondent Nos. 1 and 2 to withdraw sum of Rs.1,50,000/- on furnishing personal undertaking before the Tribunal in case, the appeal is allowed, they would bring back the said amount. He submits that Respondent Nos. 1 & 2 have not paid single Rupee to the applicant for day-to-day maintenance. He submits that the Applicant No.1 is retired person and Applicant No.2 is household wife. He submits that both the applicants are Senior Citizens and they do not have any source of income. Hence, it is very difficult for them to maintain day-to-day necessities also. He further submits that the Applicant No.2 is not keeping well and she requires some amount for her medical treatment. In support of this contentions, the learned Counsel for the applicant relies on certificate issued by Mulay Hospital of Nashik.

6 The learned Counsel for the applicants submits that this Hon'ble

Court be pleased to allow the applicants to withdraw the amount of their share during the pendency of the present First Appeal. He submits that if application is not allowed, irreparable loss and injury will be caused to them.

7 On the other hand, the learned Counsel for the Appellant Insurance Company vehemently opposed the present Civil Application. He submits that initially the Respondent Nos. 1 and 2 i.e. daughter-in-law and grandson of applicants already withdrawn sum of Rs.1,50,000/-. He submits that if the remaining amount is withdrawn by the applicants during the pendency of First Appeal, then nothing will survives in the present matter. He submits that if appellant succeed before this court, it will be very difficult for them to recover the entire amount from the applicants. Hence, this Civil Application be dismissed.

8 The learned Counsel for the Respondent No.6 submits to the court's order.

9 I heard both the sides at length. In the present proceeding, both the applicants are Senior Citizens. The Applicant No.2 is required amount for her medical treatment as stated in medical certificate annexed to the present Civil Application on page 9 and 10.

10 Considering the submissions made by the learned Counsel for the applicants, averments made in Civil Application and as both the applicants are Senior Citizen and they required amount for medical treatment, I am of the opinion that applicants have made out case for

allowing them to withdraw some amount during the pendency of First Appeal.

11 Hence, following order is passed:

- a) Both Applicants i.e. Ramdas Tukaram Patil & Smt. Kamalbai Ramdas Patil each are entitled to withdraw 10% of their share with accrued interest on furnishing the personal undertaking before the Tribunal that in case the Appeal is allowed, they would bring back the said amount within stipulated time.
- b) The Tribunal is directed to invest the remaining amount in Fixed deposits of any Nationalised Bank, if it is not invested initially for the period of one year and same to be continued till further orders.
- c) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)