

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

**CIVIL APPLICATION (Stamp) NO.15934 OF 2017
IN
FIRST APPEAL NO.443 OF 2017**

Aditi Sameer Ygnik
and another ... Applicant

In the matter between

New India Assurance Company
Limited. ... Appellant.

Versus
Smt. Aditi Samir Yagnik
and others ... Respondents.

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Ms. Varsha Chavan for Applicants
Mr. Devendranath S. Joshi for Appellant.

**WITH
CIVIL APPLICATION NO.1490 OF 2017
IN
FIRST APPEAL NO.443 OF 2017**

The New India Assurance
Co. Ltd. ... Applicant.

Versus
Smt. Aditi Samir Yagnik ... Respondent.

....

Mr. Devendranath S. Joshi for Applicant.

**CORAM : NARESH H. PATIL AND
Z.A. HAQ, JJ.**

21st AUGUST, 2017.

P.C.:

1. Learned Counsel appearing for the applicants submits that the deceased was serving as Manager (M2-A) in Larsen and Toubro Private Limited. He was getting monthly salary of Rs.2,00,000/-with other expenses. He met with an accident on 19.02.2009 while he was travelling in the auto-rickshaw. The auto-rickshaw rammed in to the stationary bus. The deceased died on the spot. The driver of the auto-rickshaw suffered injuries and succumbed to death in Hospital.

2. The legal heirs of the driver filed an application under the Workmen Compensation Act before the Commissioner for Workmen's Compensation Act and Judge, Second Labour Court, Mumbai. The legal heirs of the deceased passenger Sameer Yagnik had filed an application bearing Claim Application No. 935 of 2009 under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'). At the initial stage, an order of payment of Rs.50,000/- was passed by invoking the jurisdiction under Section 140 of the Act. The legal heirs of the deceased namely; Aditi Samir Yagnik wife and the minor son namely; Kum. Rohan Samir Yagnik received the said amount of Rs.50,000/-. By an order dated 04.11.2016, the Motor Accidents Claims Tribunal, Mumbai decided the said Claim Application bearing No.935/2009 filed by the legal heirs of the deceased Samir Yagnik. The Tribunal had granted compensation of Rs.2,68,41,000/- (rupees Two Crore Sixty Eight Lakh Fourty One Thousand only) to the applicants. The Tribunal also passed an order in respect of apportionment of the said amount i.e. 60% of the compensation amount awarded

with accrued interest was granted to the original claimant No.1 wife of the deceased namely; Aditi Samir Yagnik and 40% of the compensation amount with accrued interest to the son of the deceased namely; Kum. Rohan Samir Yagnik.

3. The learned Counsel appearing for the appellant New India Assurance Company submitted that the entire amount of compensation along with interest i.e. Rs.4,64,40,208/- (Rupees Four Crore Sixty Four Lakhs Fourty Thoursand Two Hunderd and Eight) is desposited with the registry of the Motor Accidents Claim Tribunal, Mumbai on 29.05.2017.

4. The Counsel appearing for the applicants (original claimants) submits that, at this stage, considering the need and requirement of the applicants, 25% amount be paid to the applicants (original claimants). The applicant No.2 son of the deceased is near about completing his engineering course.

5. The Counsel appearing for the Insurance company submits that the passenger of the hired vehicle is not covered under the policy. The Counsel places reliance on terms and conditions of the policy in clause 44, which read thus:

“44. Indemnity to Hirer – Package Police- Negligence of the Owner or Hirer-

It is hereby declared and agreed that in consideration of payment of an additional premium of Rs..... the Insurer will indemnify any hirer of the Vehicle insured against loss, damage and liability as defined in this Policy arising in connection with the Vehicle insured while let on hire.

Provided that any such hirer shall as through he/she were the insured observe fulfill and be subject to the terms, exceptions, conditions and limitations of this policy in so far as they apply.

6. We have perused the record placed before us. We also have perused the clause 44 of the terms and conditions of the Insurance Policy. The claimants have placed on record salary certificate of the deceased who was working in the Managerial capacity in Larsen and Toubro Limited. At the time of his death, his age was 43 years. He is survived by his wife and son. Taking into consideration and evidence on record and the need of the claimants, at this stage we are inclined to allow the claimants to withdraw Rs.50,00,000/- (Rupees Fifty Lakhs) with liberty to them to approach this Court, for getting some more amount out of the awarded amount, in case any further requirement arises. In the circumstances, we pass following order:

ORDER

(A) The Application for withdrawal of amount as well as the application for stay are partly allowed.

(B) The Claimant namely Aditi Samir Yagnik wife of deceased is entitled to withdraw an amount of Rs. Rs.50,00,000/- (Rupees Fifty Lakhs) from the Registry of the Motor Accident Claim Tribunal, Mumbai.

(C) The Claimant No.1 to take care of the requirements of the Claimant No.2 namely Roshan Samir Yagnik son of the deceased, out of the amount allowed to be withdrawn by her.

(D) We direct the Tribunal to invest amount desposited by the New India Assurance Company Limited in a fixed deposit scheme of a Nationalized Bank after deducting an amount of Rs.50,00,000/- (Rupees Fifty Lakhs).

(E) The Claimant namely Aditi Samir Yagnik is permitted to withdraw 25% interest accrued on the fixed deposit, quarterly.

7. Both the Civil Applications are disposed of.

(Z.A. HAQ, J)

(NARESH H. PATIL, J)