

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 5671 of 2018
IN
FIRST APPEAL (STAMP) NO. 41315 of 2017**

Rekhabai Satish Tayade and others **...APPLICANTS**

VERSUS

Pitambar Mansaram Hivarkhar and another **...RESPONDENTS**

Mr Girish S. Rane, Advocate for applicants
Mr S.B. Bhapkar, Advocate for respondent No.1
Mr M.K. Goyanka, Advocate for respondent No.2

CORAM : SUNIL P. DESHMUKH, J.

DATE : 27th April 2018

ORDER :

Heard learned counsel for the parties.

2. It emerges that accident had taken place in 2009 and since then family members of deceased Satish Tayade have lost earning source for their livelihood and are put to hardship and the family is facing economic problems. The deceased had been permanent employee in Forest Department. As applicants No. 2 to 4 are growing, lot of expenses have also incurred over their education and also on medical treatment of applicant No.5. Learned Counsel for applicants, therefore, urges to allow

applicants to withdraw amount deposited in this Court pursuant to the order passed by the Tribunal.

3. Learned Counsel for respondents/appellants, however, submit that it is not clear as to whether the deceased had been holding valid driving licence and question of contributory negligence is also involved and further the quantum as considered by the Tribunal may not be in tune with income of deceased. He, therefore, purports to resist the application.

4. Thus, having regard to aforesaid, it does not appear that there is any particular dispute with regard to needs expressed by applicants and as on the date the award is in favour of the applicants and looking at that except no fault liability amount no further amount is paid to claimants, it would be expedient to allow applicants to withdraw 75% of the amount deposited in this Court, subject to following conditions.

(I) Applicants are allowed to withdraw 50% of the deposited amount alongwith accruals thereon on furnishing undertaking that they shall pay back/re-deposit the amount in this Court being withdrawn under this order, within a period of four weeks of passing such order. Undertaking on behalf of the minors be furnished by their mother.

(II) Further 25% of the deposited amount alongwith accruals thereon may be allowed to be withdrawn subject to furnishing solvent security to the satisfaction of the Registrar (Judicial) of this Court.

(III) Such withdrawals shall be subject to the same treatment as directed in operative part of the Award by the Tribunal in Motor Accident Claim Petition No. 132 of 2011. Copies of fixed deposit receipts be furnished to the Court.

(IV) Applicant No.1/mother of minor applicants No.2 to 4 be allowed to withdraw interest over the amounts invested in fixed deposit receipts in the name of minor applicants No.2 to 4 for their expenses.

5. Civil Application is, accordingly, disposed of in above terms.

**(SUNIL P. DESHMUKH)
JUDGE.**