

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

CIVIL APPLICATION NO. 7714 OF 2018
IN FA/3347/2017

KASHIBAI SAHEBRAO BALI
VERSUS
L AND T GENERAL INSURANCE COMPANY LTD., THR ITS BRANCH
MANAGER, MUMBAI AND ORS

...
Advocate for Applicant : Mr. Pandurang M. Gaikwad.
Advocate for Respondent No.1 : Mr. S. G. Chapalgaonkar.
...

CORAM : K.K. SONAWANE, J.

DATED : 3rd JULY, 2018.

Order :-

1. Heard Mr. Gaikwad, learned counsel for applicants-original claimants and Mr. Chapalgaonkar, learned counsel for respondent No. 1- Insurance Company. No one else appeared for rest of respondents. Perused the application.

2. This is an application seeking permission for withdrawal of the decretal amount deposited in this Court. It has been contended that appellant- Insurance Company has deposited in all Rs.7,81,943/- (Rs. Seven Lakhs Eighty One Thousands Nine Hundred Forty Three Only) towards compensation as directed by the learned Tribunal. The applicants preferred present application seeking permission to withdraw the same.

3 Learned counsel for respondent No.1 raised objection and submits that the appellant Insurance Company by taking recourse of section 173 of the Motor Vehicles Act, 1888 prefer the appeal. The

learned Tribunal did not consider the evidence on record in its proper perspective. The compensation amount determined by Tribunal is exorbitant and not reasonable one. The driver of the offending vehicle was not possessing valid license. Hence, he requested not to allow the applicants- claimants for withdrawal of the amount deposited in this court.

4. Having given anxious consideration to the arguments advanced on behalf of both side, I find it justifiable and reasonable to allow the applicants to withdraw lump-sum amount of Rs.5,00,000/- (Rs. Five Lakhs Only) from the total decretal amount deposited on behalf of appellant- Insurance Company in this Court towards compensation. In regard to the share of applicant No.2 Bhaginath s/o. Sahebrao Bali, he is 32 years old and he was not dependent on his father, therefore, his share will be considered at the time of final decision of the appeal on merit. In view of above, application deserves to be allowed partly.

5. Accordingly, the application stands partly allowed. The withdrawal of compensation amount in respect of applicant No.2 Bhaginath s/o. Sahebrao Bali is kept in abeyance till decision of the appeal on merit. However, prayer for withdrawal of amount by applicant No.1 Kashibai w/o. Sahebrao Bali is hereby partly allowed. The applicant No.1 Kashibai w/o. Sahebrao Bali is permitted to withdraw lump-sum amount of Rs.5,00,000/- (Rs. Five Lakhs Only) from the amount deposited in this Court subject to condition of furnishing undertaking to the effect that she would refund the amount so withdrawn, in case any adverse situation arises in the appeal. It is stipulated that out of total sum of Rs. 5,00,000/- (Rs. Five Lakhs Only)

allowed to be withdrawn by the applicant No.1, the amount of Rs. 3,00,000/- (Rs. Three Lakhs Only) be invested in the Fixed Deposit Receipts account in any Nationalized Bank for a period of six years. The applicant No.1 is also entitled to avail the benefit of interest on the Fixed Deposit Receipt amount kept in her name in the Nationalized Bank. The rest of the decretal amount remained balance in this Court towards compensation be invested in the Fixed Deposit Receipts Account in any Nationalized Bank for a period of two years or till decision of the appeal, whichever is earlier with liberty to renew the same in future, if required. The Registry to take requisite steps for disbursement of the amount.

6. The Civil application stands disposed of in above terms. No order as to costs.

[K. K. SONAWANE]
JUDGE

rrd.