

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

**CIVIL APPLICATION NO. 2819 OF 2018
IN
FIRST APPEAL (ST.) NO. 28273 OF 2017**

Jagannath Sopan Thopte @ Gaikwad & Ors. ... Applicants

IN THE MATTER OF

The New India Assurance Co. Ltd. ... Appellant

V/s.

Jagannath Sopan Thopte @ Gaikwad & Ors. ... Respondents

Mr. S.S. Jinsiwale for the Appellant-Assurance Company.

Mr. Virdham Kakade for the Respondents and Applicants in CAF/2819/2018.

CORAM : K.K. SONAWANE, J.

DATE : 14th AUGUST, 2018.

P.C. :

1 Heard the learned Counsel for the applicants-original claimants and the learned Counsel for Appellant-Assurance Company. Perused the application and other relevant documents produced on record. The applicants-original claimants preferred the present application seeking permission to withdraw the compensation amount of Rs.27,83,000/- deposited before the M.A.C.T. Pune in M.A.C.P. No.392 of 2008 by the appellant-Assurance Company. The applicants are parents and brother of the deceased who died in

the vehicular accident on 20.08.2007. Learned Counsel for the appellant-Assurance Company raised the objection and submits that the learned Tribunal failed to appreciate the evidence on record that the claimants are parents and brother of the deceased who died in mishap. The deceased was 22 years old bachelor. The Tribunal erroneously awarded exorbitant and excessive compensation amount in favour of claimants. He requested not to allow the applicants-claimants to withdraw the compensation amount.

2 In view of nature of subject matter and the grounds of appeal raised on behalf of the appellant-Assurance Company, I find it justifiable to allow the applicants for withdrawal of 50% of the compensation amount deposited by the Appellant-Assurance Company in this matter. Definitely it would sub-serve the purpose in the interest of justice. Hence, the application deserves to be allowed.

3 Accordingly, the application stands allowed partly. The applicants-original claimants are permitted to withdraw the lump sum amount of Rs.14 lakhs from the compensation amount deposited in this matter subject to condition that the applicants-original claimants shall furnish the undertaking that they would refund the compensation amount so withdrawn forthwith in case any contingency arises in the appeal. The rest of the balance decretal

amount lying in the M.A.C.T. Pune deposited in this matter be invested in any nationalized bank in F.D.R. account for a period of two years or till decision of the present appeal on merit whichever is earlier with liberty to renew the F.D.R. in future if required.

4 It is further stipulated that out of lump sum amount of Rs.14 lakhs allowed to be withdrawn by the applicants-claimants, the amount of Rs.4 lakhs be paid to applicant No.3 Hemantkumar Thopte @ Gaikwad, brother of the deceased and out of balance amount of Rs.10 lakhs, Rs.5 lakhs each be paid to applicant Nos.1 and 2, parents of the deceased.

5 The Registry of the M.A.C.T. Pune shall take requisite step to disburse the compensation amount in favour of applicants-claimants as directed above and shall forward the compliance report to this Court.

6 In view of above, Civil Application stands disposed of.

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(K.K. SONAWANE, J.)