

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

**CIVIL APPLICATION NO. 2563 OF 2018
IN
FIRST APPEAL NO. 742 OF 2017**

Sourabha Madhav Dhapare and another ... Applicants

In the matter between

Bharati AXA General Insurance Company Ltd ... Appellant

Versus

Sourabha Madhav Dhapare and others ... Respondents

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Mr. Kishor Patil a/w Mr. Anand Nikhal for Applicants.

Mr. Nikhil Mehta i/b KMC Legal Venture for Respondent-insurance company.

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CORAM : K. K. SONAWANE, J.

DATE : 8th AUGUST, 2018.

P. C.:

1. Heard learned Counsel for the applicants-original claimants and learned Counsel for respondent-insurance company.
2. The applicant moved the present application for seeking permission to withdraw the amount of compensation deposited in the M.A.C.T. Pune in M.A.C.P. No. 21 of 2014.
3. Learned Counsel for the respondent-insurance company raised objection and submits that the respondent-insurance company has already filed appeal and put in question the quantum of

compensation amount determined by the Tribunal. The exorbitant excessive amount came to be granted in favour of the claimants. He also submits that driver of the offending vehicle was not possessing valid driving license at the time of occurrence of the accident. He also submits that the claimants may not be allowed for withdrawal of amount till decision of the appeal.

4. In view of the submission on the part of applicants-claimants as well as learned Counsel for the respondent-insurance company, I find that it would not just and proper to preclude the applicants-claimants from availing benefits of the award passed by the Tribunal, till decision of the appeal on merit. In such circumstances, civil application deserves to be allowed.

5. Accordingly, civil application stands partly allowed. The claimants-applicants are hereby permitted to withdraw the lumpsum amount of Rs.35,00,000/- from the compensation amount deposited before the M.A.C.P. Pune in M.A.C.P. No.21 of 2014, subject to condition that the applicants-claimants shall furnish undertaking that they would refund the entire compensation amount so withdrawn, in case any contingency arises in the appeal. The applicant No.1 is permitted to furnish undertaking on behalf of

minor son i.e. applicant No.2. Rest of the balance compensation amount deposited before the M.A.C.T. Pune be invested in any nationalised bank in FDR account for a period of two years or till decision of the present appeal on merit, whichever is earlier, with liberty to renew the FDR in future, if required.

6. It is further stipulated that from the amount of Rs.35,00,000/- allowed to be withdrawn by the claimants, the lumpsum amount of Rs.25,00,000/- be invested in any nationalised bank in FDR account in the name of minor applicant No.2 – Master Sahil Sourabha Dhapare for a period of seven years. Rest of the balance amount of Rs.10,00,000/- be allowed to be disbursed in favour of applicant No.1 – Sourabha Madhav Dhapare, after furnishing undertaking.

7. Registry of the M.A.C.T. Pune to take requisite steps for disbursement of amount in favour of the applicants as directed above and forward compliance report to this Court.

8. Accordingly, civil application stands disposed of in above terms.

(K. K. SONAWANE, J.)