

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

**CIVIL APPLICATION NO. 2561 OF 2018
IN
FIRST APPEAL STAMP NO. 23617 OF 2017**

Dipti Bharat Shah and another ... Applicants

In the matter of

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

Versus

Dipti Bharat Shah and others ... Respondents

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Mr. Anil P. Chavan a/w Sarang S. Karbhajan i/b Mr. A. M. Gokhale for Applicants.

Ms. Poonam Mital for Respondent-Insurance company.

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CORAM : K. K. SONAWANE, J.

DATE : 27th JULY, 2018.

P. C.:

1. Heard learned Counsel for the applicants and learned Counsel for respondent-insurance company. Perused the application.

2. The applicants preferred present application seeking permission to withdraw the decretal amount of Rs.24,72,000/- approximately, deposited on behalf of the appellant-insurance company in M.A.C.T. Mumbai in M.A.C.P. No. 2540 of 2008. The applicants are the widow and daughter of the deceased Bharat

Shah, who died in the vehicular accident. The learned Member of the Tribunal after appreciating the entire evidence on record, partly allowed the application and directed the owner and insurer of the offending vehicle to pay the compensation. Pursuant to the impugned judgment and award, the appellant-insurance company deposited the amount before the Tribunal. The claimants are seeking permission to withdraw the same.

3. In view of nature of the subject matter and factual aspects on record, there is no impediment to allow the applicants – original claimants to withdraw of at least 75% of the decretal amount deposited before the Tribunal, which would accrue to Rs.18,00,000/- approximately. Definitely, it would subserve the purpose.

4. Accordingly, civil application stands allowed partly. Both the applicants are directed to withdraw a sum of Rs.18,00,000/- from the total amount deposited on behalf of the appellant-insurance company before the M.A.C.T. Mumbai in M.A.C.P. No. 2540 of 2008, subject to condition that applicants shall furnish undertaking that they would refund the amount so withdrawn

forthwith in case any contingency arises in the appeal. Rest of the balance decretal amount deposited before the M.A.C.T. be invested in FDR account in any nationalised bank for a period of two years or till decision of the appeal, whichever is earlier, with liberty to renew FDR in future, if required.

5. It is stipulated that from the total sum of Rs.18,00,000/- allowed to be withdrawn by the applicants, Rs.10,00,000/- be invested in FDR account in the name of applicant No.2 – Miss. Forum Bharat Shah for a period of six years or till settlement of her marriage, whichever is earlier. The balance amount of Rs.8,00,000/- be disbursed in favour of applicant No.1 – Smt. Dipti Bharat Shah, on furnishing undertaking as referred above.

6. The Registrar of the M.A.C.T. Mumbai, shall do the needful to facilitate for disbursement of amount in favour of the applicants-claimants as mentioned above.

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

(K. K. SONAWANE, J.)