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

**CIVIL APPLICATION NO. 2748 OF 2018
IN
FIRST APPEAL NO. 368 OF 2017**

Smt. Alpa Vasant Patel & Ors. .. Applicants

In the matter of

Oriental Insurance Co. Ltd. .. Appellant

Vs.

Smt. Alpa Vasant Patel & Ors. .. Respondents

Mr. Nikhil Mehta I/b KMC Legal for the Applicants.

Mr. Devendranath S. Joshi for the Appellant-Insurance Company.

CORAM : K. K. SONAWANE, J.

DATE : 10th AUGUST, 2018.

P. C. :

1. Heard learned Counsel for applicants-original claimants and learned Counsel for appellant-Insurance Company. Perused application.
2. The applicants-original claimants moved the present application seeking permission to withdraw compensation amount of Rs.87,92,000/- deposited before the M.A.C.T., Mumbai in Claim Application No.1143 of 2008. Learned Counsel for appellant-Insurance Company raised objection to allow the applicants-claimants for withdrawal of the compensation amount and submits that the learned Tribunal has granted exorbitant and excessive compensation amount in favour of applicants without appreciating the facts and circumstances on record. The learned Tribunal did not appreciate the documents of I.T. return produced on record

showing the net profit the deceased to the tune of Rs.1,44,000/-. After calculating the future prospects @ 40%, the income of the deceased would be accrued to Rs.2,01,600/- and after considering the multiplier of 38 years age of the deceased, the total compensation would be payable to the claimants only to the tune of Rs.28,38,000/- along with the amount awarded for the conventional heads. After calculating interest on the same amount, the claimants, are only entitled to get an amount of Rs. 45,00,000/- approximately in this case. Therefore, the learned Counsel for the appellant-Insurance Company requested not to allow the applicants for withdrawal of the amount. There are vital error in the findings of learned Tribunal. He prayed to list the appeal for final hearing at the earliest.

3. Having given anxious consideration to the argument advanced on behalf of both sides, I am not in agreement with the learned Counsel for the appellant-Insurance Company, to withhold the entire compensation amount till the final adjudication of the appeal on merits. It is not in dispute that the applicants-claimants are widow, children and mother of the deceased and they are pursuing the claim application since 2008. In view of mathematical calculation propounded on behalf of learned Counsel for the appellant-Insurance Company, I find that the applicants-original claimants be allowed to withdraw 50% of the total compensation amount of Rs.87,92,000/- deposited before the M.A.C.T., Mumbai in the present matter. Definitely, it would subserve the purpose to protect the interest of the appellant and also would provide some sort of solace to applicants-

claimants. Therefore, the application deserves to be allowed partly.

4. Accordingly, the application stands allowed partly.

5. The applicants-claimants are hereby permitted to withdraw lumpsum amount of Rs.44 lakhs from the compensation amount deposited before the learned M.A.C.T., Mumbai in Claim Application No. 1143 of 2008, subject to condition that the applicants-original claimants shall furnish undertaking that they would refund the amount so withdrawn forthwith, if any contingency arises in the appeal. Rest of the balance compensation amount remained deposited before the M.A.C.T., Mumbai be invested in FDRs in any nationalized bank for a period of two years or till the decision of the appeal whichever is earlier with liberty to renew FDR in future, if required.

6. It is further stipulated that out of total sum of Rs.44 lakhs allowed to be withdrawn, amount of Rs.20 lakhs be invested in FDR in any nationalised bank in the name of applicant No.4-Kum. Urvashi Vasant Patel for a period of 5 years or till settlement of her marriage whichever is earlier. A sum of Rs.15 lakhs be invested in FDR in any nationalised bank in the name of applicant No.5-Kum. Sumit Vasant Patel for a period of 5 years. Amount of Rs.1.50 lakh each be paid to applicant No.2-Mr. Babubhai Mulchand Patel and applicant No.3-Mrs. Krishnaben Babubhai Patel, parents of the deceased and rest of the amount of Rs.6 lakhs be paid to applicant No.1-widow Smt. Alpa Vasant Patel.

7. The Registrar of the M.A.C.T., Mumbai to take requisite steps for

disbursement of the amounts and file compliance report to this Court.

8. Accordingly, the Civil Application stands disposed of in above terms.

Arjun
Machhindra
Kadam

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by Arjun
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2018.08.16
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[K. K. SONAWANE, J.]