

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

**CIVIL APPLICATION NO. 2565 OF 2018
IN
FIRST APPEAL (ST.) NO. 10355 OF 2016**

Nazma Abdul Hamid Boxwala @ Shaikh ... Applicant

IN THE MATTER OF
New India Assurance Co. Ltd. ... Appellant

V/s.
Nazma Abdul Hamid Boxwala @ Shaikh & Ors. ... Respondents

Mr. S.M. Dange for the Appellant.
Ms. Varsha Chavan for Respondent Nos.1 to 3.

CORAM : K.K. SONAWANE, J.

DATE : 25th JULY, 2018.

P.C. :

1 Heard learned Counsel for the applicants-original claimants and the learned Counsel for the respondents-Assurance Company. No one else appeared on behalf of owner of the offending vehicle. Perused the application.

2 The original claimants filed the present Application seeking permission to withdraw the decretal amount of Rs.26,65,855/- deposited in the M.A.C.T. Mumbai in execution proceeding of Application No.1184 of

2008. Learned Counsel for the applicants submit that applicants-original claimants are widow, minor children and father of the deceased Abdul Hamid Boxwalla who succumbed to injuries caused due to vehicular accident. Learned Tribunal after appreciating circumstances on record imposed the monetary liability on the owner and insurer of the offending vehicle. Pursuant to award passed by the Tribunal, respondent-Assurance Company deposited the decretal amount in the Tribunal. Applicants-original claimants sought permission for withdrawal of the same. Heard learned Counsel for the respondent-Assurance Company. In view of ground raised in the proposed appeal, there is no impediment to allow the applicants-original claimants for withdrawal of lump sum amount of Rs.20 lakhs from the total decretal amount deposited before the Tribunal, Mumbai. Definitely it would sub-serve the purpose in the interest of justice. Hence, application deserves to be allowed.

3 Accordingly, application stands partly allowed. Applicants-original claimants are permitted to withdraw the lump sum amount of Rs.20 lakhs from the decretal amount deposited with the Tribunal Mumbai, subject to condition that the applicants shall furnish the undertaking that they would refund the amount so withdrawn, in case any contingency arises in the Appeal. Rest of the balance decretal amount be invested in F.D.R. account in

any Nationalized Bank 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 stipulated that out of total sum of Rs.20 lakhs allowed to be withdrawn by the applicants-original claimants, the amount of Rs.7 lakhs each be kept in F.D.R. account in the name of minor claimants Kum. Anabia Abdul Hamid Boxwalla and Kum. Faiza Abdul Hamid Boxwalla in any nationalized bank till they both attained the age of majority. Remaining balance amount of Rs.6 lakhs be disbursed amongst the applicants in following manner. Applicant No.1 Nazma Abdul Hamid Boxwalla Rs.4 lakhs and Applicant No.4-father Abdul Wahab Imam Saheeb Boxwalla @ Shaikh Rs.2 lakhs.

5 The Registrar of the M.A.C.T. Tribunal shall do the needful to disburse the amount in favour of the applicants-original claimants as mentioned above. Accordingly, the application stands disposed of.

(K.K. SONAWANE, J.)

Waishali
Sushil
Waghmare

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