

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

**CIVIL APPLICATION NO. 2660 OF 2018
IN
FIRST APPEAL (ST.) NO. 34423 OF 2017**

Devyani Dinanath Shinde & Ors. ... Applicants

IN THE MATTER BETWEEN

Bajaj Allianz General Insurance Co. Ltd. ... Appellant

V/s.

Devyani Dinanath Shinde & Ors. ... Respondents

Mr. D.S. Joshi for the Appellant.

Mr. T.J. Mendon for Respondent Nos.1 to 4 and Applicants in CAF/2660/18.

CORAM : K.K. SONAWANE, J.

DATE : 9th AUGUST, 2018.

P.C. :

1 Heard the learned Counsel for the applicants-original claimants and the learned Counsel for the appellant-Insurance Company. The present application came to be filed by the applicants-original claimants for seeking permission to withdraw the compensation amount of Rs.62,04,000/- deposited before the M.A.C.T. Mumbai in Claim Application No.571 of 2010. The learned Counsel for the appellant-Insurance Company raised the objection and submits that the Insurance Company has already preferred the

appeal with application for condonation of delay and put in controversy the quantum of compensation amount determined by the Tribunal. According to learned Counsel, the Tribunal awarded excessive compensation amount without appreciating the facts and circumstances on record in its proper perspective. The learned counsel for Insurance company further added that the driver of the offending vehicle was driving the vehicle by consuming liquor. It was the case of drunken driving. Hence, he submits that the applicants-original claimants may not be allowed to withdraw the amount.

2 In view of nature of the subject matter and the argument advanced on behalf of both sides, I am not in agreement with the contentions propounded on behalf of learned Counsel for Insurance Company to preclude the claimant-applicant to avail the benefit of impugned judgment and award passed by the learned Tribunal. In view of grounds raised in the appeal, there is no impediment to allow the applicants to withdraw atleast lump sum amount of Rs.47 lakhs from the total sum of compensation deposited before the learned Tribunal. Definitely it would sub-serve the purpose to provide some sort of solace to widow and children of the deceased Dinanath Shinde who breathed his last in a vehicular accident. Therefore, the application deserves to be allowed.

3 Accordingly, the application stands allowed partly. The applicants-original claimants are hereby permitted to withdraw the lump sum amount of Rs.47 lakhs from the total compensation amount deposited on behalf of appellant-Insurance Company in M.A.C.T. Mumbai in Application No.571 of 2010. The applicants are permitted to withdraw the aforesaid amount subject to condition that they shall furnish the undertaking that they would refund the amount so withdrawn forthwith in case any contingency arises in the appeal. The rest of the balance decretal amount deposited before the M.A.C.T. Mumbai in the present matter be invested in any nationalized bank in F.D.R. account for a period of two years or till decision of the 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 the total sum of Rs.47 lakhs allowed to be withdrawn by the applicants-claimants, the sum of Rs.20 lakhs be invested in F.D.R. account in any nationalized bank in the name of applicant No.3 Miss Dipti Dinanath Shinde for a period of five years or till settlement of her marriage, whichever is earlier. The another sum of Rs.20 lakhs be invested in the name of applicant No.4 Master Siddesh Dinanath Shinde for a period of five years in F.D.R. account in any nationalized bank. Rest of the balance amount of Rs.2 lakhs be paid to the applicant No.2 Smt.

Taramati Rajaram Shinde whereas balance amount of Rs.5 lakhs be disbursed in favour of applicant No.1 Smt. Devyani Dinanath Shinde.

5 The Registry of the M.A.C.T. Mumbai shall take requisite step to disburse the 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.

(K.K. SONAWANE, J.)

Waishali
Sushil
Waghmare

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by Waishali
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2018.08.14
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