

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

CIVIL APPLICATION NO.2347 OF 2017  
IN  
FIRST APPEAL NO.1087 OF 2012

|                                     |                  |
|-------------------------------------|------------------|
| Leelabai Rohidas Korekar and Ors.   | .... Applicants  |
| <b><i>In the matter between</i></b> |                  |
| Abhay Chunilal Gugale and Anr.      | .... Appellants  |
| <b><i>V/s.</i></b>                  |                  |
| Leelabai Rohidas Korekar and Ors.   | .... Respondents |

Mr. D.D. Shinde for Applicant/Respondent No.1.

Mr. Ketan Joshi for Applicant/Respondent No.7.

Mr. Sumit Khaire for the Appellants.

CORAM : **DR. SHALINI PHANSALKAR-JOSHI, J.**

DATE : **2<sup>ND</sup> NOVEMBER, 2018.**

**P.C. :**

1. Heard learned counsel for the respective parties.
2. Applicants are the Original Claimants, who have filed this application for withdrawal of the entire amount of compensation deposited by the Appellants in the Tribunal.
3. Learned counsel appearing on behalf of the Appellants, who are the Driver and the Owner of the offending vehicle, submits that, Original Claimant No.6-Dwarkabai, the mother of the 'Deceased', has died during the pendency of the Claim Petition. However, her legal heirs were not brought on record and, therefore, the Claim Petition should have been abated against her.

4. Even assuming that, the Claim Petition was abated against Original Claimant No.6-Dwarkabai, it cannot be abated against the rest of the Claimants, who are the wife and the minor children of deceased-Rohidas. Therefore, this contention cannot be accepted at this stage to deprive the Applicants-Original Claimants from withdrawing the amount of compensation.

5. The second contention raised is that, the vehicle of the Appellants was not at all involved in the accident. However, in this respect, learned counsel for the Applicants-Claimants brings to the notice of this Court that, the Appellant No.1 himself, against whom the 'First Information Report' was lodged and 'Charge-Sheet' has been filed, has not entered into the witness box to rebut the evidence of the eye-witness, who is examined in this case and who has clearly identified the offending vehicle and negligence on the part of the 'Driver' and 'Owner' of the offending vehicle.

6. In view thereof, at this prima facie stage, there is no reason to reject this application for withdrawal of the amount of compensation filed by the Applicants-Claimants.

7. However, considering that the Appeal is pending, the Applicants are permitted to withdraw 50% of the amount of compensation, subject to furnishing of usual undertaking.

8. Civil Application stands disposed off in the above terms.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**