

Sarnobat

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

**CIVIL APPLICATION (STAMP) NO. 25377 OF 2017
ALONGWITH
IN
FIRST APPEAL (STAMP) NO. 32209 OF 2015.**

Ganesh Bhimrao Suryawanshi & Anr. ...Applicants.

Vs.

Reliance General Insurance Co. Ltd.

And Ors.

...Respondents.

Mr. Ashok Misal, for the Applicants.

Ms. Dipika Prabala I/by Res Juris, for the Respondents.

CORAM : V. M. DESHPANDE, J.

DATE : 27th JUNE, 2018.

P. C. :

1. This is an application moved by original claimants for withdrawal of the amount.
2. Heard Shri Misal the learned counsel for the applicants/ original claimants and Ms. Prabala for non-applicant No. 1, in this application Insurance Company. By the judgment and award dated 11th June, 2015, the learned Member of Motor Accident Claims Tribunal granted award in favour of the claimants that they are entitled to receive Rs.8,54,000/- along with the interest at the rate of 9% per annum.

2. The Insurance Company preferred the appeal which was barred by the limitation and therefore, an application for condonation of delay was moved which is allowed by this Court today. At the time of filing the appeal a Civil Application No. 4032 of 2015 was also filed by the Insurance Company for stay and this Court (Coram: Mrs. Mrudula Bhatkar, J.) on 2nd December, 2015 directed the Insurance Company to deposit entire decretal amount and on the condition ad-interim stay was granted.

3. In pursuance to the order dated 2nd December, 2015 Insurance Company has deposited entire amount before the Trial Court.

4. In the application for withdrawal, it is stated on oath by the claimants that they are parents of deceased. According to the averments made in the application, they are having one daughter who is taking education and the amount is required for her education and also for her marriage purpose. The statements asserted are not controverted by Insurance Company by filing the reply.

5. The impugned order shows that apportionment is also done by the learned Judge and by that claimant No. 1 the father is granted an amount of Rs. 4,27,000/- along with interest and proportionate costs. Similarly mother the claimant No. 2 was granted the same amount.

6. Since the application is for withdrawal of the amount deposited by the Insurance Company, I am of the view that, looking to the need it can be granted in part. In that view of the matter, I pass the following order;

ORDER

- I) The application is partly allowed.
- II) The claimant No. 1 Ganesh Bhimrao Suryawanshi will be entitled to receive an amount of Rs.2,10,000/- along with interest so also the claimant No. 2 Sou. Kamal Ganesh Suryawanshi will be entitled to receive Rs.2,10,000/- along with the interest, on their giving undertaking at the time of withdrawal that, in case the appeal filed on behalf of Insurance Company allowed by this Court in that event, they will refund the amount within Six months from the date of the judgment of this Court along with interest as determined at that time by this Court.
- III) In future the applicants will be entitled to make any application by pointing out necessity for withdrawal before this Court.
- IV) The remaining amount shall be invested by the learned Court below in any Nationalized Bank initially for a period of Three years and shall continue to renew the same

as and when occasion arrived in order to save loss of interest.

V) With this application is partly allowed and disposed of.

[V. M. DESHPANDE,J.]