

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

**CIVIL APPLICATION NO. 1388 OF 2017
IN
FIRST APPEAL NO. 532 OF 2017**

Kavita Atul Malhar and others ... Applicants

In the matter of

The National Insurance Co. Ltd. ... Appellant

Versus

Kavita Atul Malhar and others ... Respondents

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T. J. Mendon for Applicants.

Mr. Amol Gatne for Respondent-original appellant.

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CORAM : K. K. SONAWANE, J.

DATE : 27th JULY, 2018.

P. C.:

1. Heard learned Counsel for the applicants and learned Counsel for respondent-insurance company. Perused the application.

2. The applicants-original claimants are seeking permission to withdraw the amount of compensation of Rs.36,50,890/- deposited before the M.A.C.T. Mumbai in Petition No. 3177 of 2009. The applicants-original claimants are the widow, son and

mother of the deceased Atul Malhar who succumbed to injury caused during the course of vehicular accident. The Tribunal has considered the entire evidence on record and granted compensation for loss caused to the applicants-original claimants. Learned Counsel for the appellant-insurance company raised objection and submits that it was the case of drunken driving at the time of occurrence of vehicular accident. Therefore, compensation awarded by the Tribunal appears to be unjust and improper. Hence, he requested not to allow the applicants to withdraw the amount.

3. After considering the attending circumstances on record, I am not inclined to consider the submissions made on behalf of learned Counsel for appellant-insurance company as referred above. After considering the entire facts and circumstances on record the tribunal has allowed the petition for compensation to the claimants. In such circumstances, it would unjust and improper to preclude the applicants-original claimants to avail the benefit of the decree passed by the learned Member, M.A.C.T. Mumbai. In view of objection raised on behalf of insurance company in the appeal and the evidence on record, I find that the

applicants-original claimants are required to be allowed to withdraw at least 75% of the amount deposited before the Tribunal i.e. lumpsum amount of Rs.28,00,000/-. Definitely, it would subserve the purpose in the interest of justice. In view of above, the civil application deserves to be allowed.

4. Accordingly, civil application is hereby allowed partly. The applicants-original claimants are permitted to withdraw lumpsum amount of Rs. 28,00,000/- deposited in the M.A.C.T. Mumbai on behalf of the insurance company, subject to condition that the applicants-original claimants shall furnish undertaking that they would refund the amount so withdrawn forthwith in case any contingency arises in the proceeding of the appeal. Rest of the balance decretal amount deposited before the Tribunal be invested in any nationalised bank in FDR account for a period of two years or till decision of the appeal on merit, whichever is earlier with liberty to renew the FDR if required, in future.

5. It is hereby stipulated that from the total sum of Rs.28,00,000/- allowed to be withdrawn by the claimants, the amount of Rs.15,00,000/- be invested in FDR account in any

nationalised bank in the name of applicant No.2 – Yash Atul Malhar for a period of six years. From rest of the balance amount of Rs.13,00,000/-, the amount of Rs. 3,00,000/- be paid to the applicant No.3 – Smt. Sulbha Ramakant Malhar – mother of the deceased and rest of the amount of Rs. 10,00,000/- be disbursed in favour of the applicant No.1- Smt. Kavita Atul Malhar.

6. The Registrar of the M.A.C.T. Mumbai shall do the needful to facilitate for disbursement of amount in favour of the applicants-claimants as mentioned above.

7. Accordingly civil application stands disposed of in above terms.

(K. K. SONAWANE, J.)

Shridhar
Marutirao
Sutar

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by Shridhar
Marutirao Sutar
Date: 2018.08.01
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