

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

**CIVIL APPLICATION NO. 2676 OF 2018
IN
FIRST APPEAL STAMP NO. 17547 OF 2017**

Chhaya Arvind Raje and another ... Applicants

In the matter of

Iffco Tokio General Insurance Company Ltd. ... Appellant

Versus

Chhaya Arvind Raje and others ... Respondents

.....

Mr. A. M. Gokhale for applicants-claimants.

Ms. Nisha Gandhi i/b Res Juris for respondent-insurance company.

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CORAM : K. K. SONAWANE, J.

DATE : 3rd AUGUST, 2018.

P. C.:

1. Heard learned Counsel for the applicant who is claimant and the learned Counsel for respondent-insurance company.
2. The applicant-claimant moved the present application seeking permission to withdraw the compensation amount deposited by the respondent-insurance company before the M.A.C.T. Thane, to the tune of Rs. 17,36,599/-.
3. Learned Counsel for the respondent-insurance company raised objection and submitted that the driver of the offending vehicle was

not having valid permit during the relevant time of accident. Learned Counsel for the respondent requested not to allow the claimant to withdraw the amount.

4. For the reasons mentioned in the application and the grounds of objection raised on behalf of appellant-insurance company, there is no impediment to allow the applicant-original claimant to withdraw compensation amount. It is to be considered that even in case the respondent-insurance company succeeded in the appeal on the technical ground of valid permit, the monetary liability can be shifted on the owner of the vehicle. But the applicant-claimant cannot be precluded from the benefit of the judgment and award passed by the Tribunal for the loss caused to them. In such circumstances, I find it justifiable to allow the applicant to withdraw lumpsum amount of Rs.12,00,000/- from the compensation amount awarded by the Tribunal. Hence, civil application deserves to be allowed.

5. Accordingly, civil application is allowed partly. The applicant is hereby permitted to withdraw lumpsum amount of Rs.12,00,000/- from the amount of compensation deposited before the M.A.C.T. Thane in M.A.C.P. No.649 of 2014, subject to condition that the

applicants shall furnish undertaking that in case any contingency arises in the appeal, they would refund the entire amount so withdrawn forthwith as per directions of this Court. The rest of the balance amount deposited before the M.A.C.T. Thane, be invested in any nationalised bank in FDR account for a period of two years or till decision of present appeal on merit, whichever is earlier, with liberty to renew the FDR in future, if required.

6. It is stipulated that from the total sum of Rs.12,00,000/- allowed to be withdrawn by the applicants-claimants, a sum of Rs.6,00,000/- be invested in the name of applicants-claimants in any nationalised bank in FDR account for a period of five years and rest of the balance amount of Rs.6,00,000/- be disbursed in favour of applicants-claimants.

7. The Registrar of the M.A.C.T. Thane shall take requisite steps for disbursement of amount in favour of the applicants as mentioned above and file compliance report of the same to this Court.

8. Accordingly, civil application stands disposed of in above terms.

(K. K. SONAWANE, J.)

Shridhar
Marutirao
Sutar

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