

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

**CIVIL APPLICATION NO. 2373 OF 2018
IN
FIRST APPEAL (ST.) NO. 15497 OF 2017**

Sangita Dashrath Kumbhar & Ors. ... Applicants

IN THE MATTER OF

Bharati AXA General Insurance Co. Ltd. ... Appellant

V/s.

Sangita Dashrath Kumbhar & Ors. ... Respondents

Mr. Nikhil Mehta i/b KMC Legal Ventrue for the Appellant.

Mr. G.S. Jadhav for Respondent Nos.1 to 4 and Applicants in
CAFST/2373/2018.

CORAM : K.K. SONAWANE, J.

DATE : 14th AUGUST, 2018.

P.C. :

1 Heard learned Counsel for the applicants-original claimants and the learned Counsel for appellant-Insurance Company. Perused the application and other relevant documents produced on record. The applicants-original claimants preferred the present application seeking permission to withdraw the compensation amount of Rs.51 lakhs approximately deposited before the M.A.C.T. Baramati in M.A.C.P. No.192 of 2012. The applicants are widow and the children of the deceased Dashrath

Kumbhar who died in the vehicular accident occurred on 24.04.2012. The learned Counsel for the appellant-Insurance Company raised the objection and submit that the learned Tribunal did not appreciate the evidence on record in proper manner and awarded the exorbitant and excessive compensation amount in favour of applicants-claimants. The learned Counsel for the Insurance Company drawn the attention of this Court towards findings expressed by the Tribunal in regard to the income of the deceased determined by the Tribunal on mathematical calculation of compensation amount. Learned Counsel also raised objection in regard to the age of the deceased and multiply applied by the Tribunal for assessment of compensation amount. He requested not to allow the applicants-claimants to withdraw the amount but the appeal be listed for final hearing on merit.

2 Having given anxious consideration to argument advanced on behalf of both sides, I am not in agreement with the learned Counsel for the Insurance Company to preclude the claimants for availing benefits of award till final adjudication of the appeal on merit. The applicants are widow and minor children of deceased who are pursuing the claim Petition since the year 2012. The learned Tribunal adjudicated the claim Petition on merit in the month of November 2016. Since then, the applicants-claimants are taking efforts to get compensation amount in this matter.

3 In view of attending circumstances and the grounds of appeal raised on behalf of appellants, I do not find any impediment to allow the applicants-claimants for withdrawal of atleast 75% of the compensation amount which would accrued to lump sum amount of Rs.38 lakhs approximately. Definitely it would sub-serve the purpose in the interest of justice.

4 Accordingly, the application stands allowed partly. The applicants are hereby permitted to withdraw the lump sum amount of Rs.38 lakhs from the compensation amount deposited on behalf of appellant-Insurance Company before the M.A.C.T. Baramati in M.A.C.P. No.192 of 2012 subject to condition that the applicants-claimants shall furnish the undertaking that they would refund the entire amount so withdrawn forthwith in case any contingency arises in the appeal. Applicant No.1 Sangita Dashrath Kumbhar shall furnish the undertaking on behalf of her minor children. The rest of the balance decretal amount lying in the M.A.C.T. Baramati in this matter be invested in any nationalized bank in F.D.R. account for a period of two years or till decision of the present appeal on merit whichever is earlier with liberty to renew the F.D.R. in future if required.

5 It is stipulated that from the total sum of Rs.38 lakhs allowed to be withdrawn by the applicants-claimants, the amount of Rs.15 lakhs each be invested in any nationalized bank in F.D.R. account in the name of minor applicant No.2 Yash Dashrath Kumbhar and applicant No.3 Chaitanya Dashrath Kumbhar till they attain the age of majority. Rest of the balance amount of Rs.8 lakhs be disbursed in favour of applicant No.1 widow Sangita Dashrath Kumbhar.

6 The Registry of the M.A.C.T. Baramati to take requisite step for disbursement of the amount in favour of applicants-claimants as directed above and shall forward the compliance report to this Court.

7 In view of above, Civil Application stands disposed of.

(K.K. SONAWANE, J.)