

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

**CIVIL APPLICATION NO. 1674 OF 2018
IN
FIRST APPEAL 149 OF 2017**

Smt. Stella Alex Thykatil and others ... Applicants
In the matter of
 The New India Assurance Co. Ltd. and others ... Appellant
 Versus
 Smt. Stella Alex Thykatil and others ... Respondents

 Mr. T. J. Mendon for applicants.
 Mr. S. M. Dange for respondent-insurance company.

CORAM : K. K. SONAWANE, J.

DATE : 8th AUGUST, 2018.

P. C.:

1. Heard learned Counsel for the applicants-original claimants and learned Counsel for the respondent-insurance company.
2. The applicants-original claimants moved the present application seeking permission to withdraw the compensation amount deposited on behalf of appellant-insurance company in M.A.C.T. Mumbai in Claim Application No. 2830 of 2008.
3. Learned Counsel for the appellant-insurance company raised objection and submits that the Tribunal has allowed excessive and

exorbitant compensation amount without considering the facts and circumstances in its proper perspective. The deceased was driving the vehicle. He did not take care and due to his negligence the accident occurred. The Tribunal failed to appreciate all these circumstances. Learned Counsel for the appellant-insurance company urged that the applicants may not be allowed to withdraw the amount and appeal be listed for final hearing on merit at the earliest.

4. In view of submissions on the part of learned Counsel for the appellant-insurance company and nature of the subject matter, I am not in agreement with the learned Counsel for the insurance company to preclude the applicants-claimants for availing the benefits of impugned judgment and award passed by the Tribunal. Admittedly, the claimants are pursuing the claim petition since 2008 and the claim petition came to be adjudicated on merit in 2016. In such circumstances and the factual aspect of the matter, it would justifiable to allow the applicants-claimants to withdraw at least lumpsum amount of Rs.40,00,000/- from the compensation deposited in the Tribunal, Mumbai in Claim Application No. 2830 of 2008. The balance amount of

compensation remained deposited with the Tribunal would sufficient to protect interest of the appellant-insurance company, in case of success in the appeal. There is no impediment to allow the applicants to withdraw some part of compensation amount as referred above on certain terms and conditions. Definitely, it would subserve the purpose in the interest of justice.

5. Accordingly, civil application stands allowed partly. The applicants are permitted to withdraw the lumpsum amount of Rs.40,00,000/- from the compensation deposited in the proceeding before the M.A.C.T. Mumbai, 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 appeal. The applicant No.1-Smt. Stella Alex Thykatil is hereby authorised to furnish undertaking on behalf of minor children. The rest of the balance decretal amount be invested in any nationalised bank in FDR account for a period of two years or till decision of the present appeal on merit, whichever is earlier with liberty to renew the FDR in future, if required.

6. It is further stipulated that from the total sum of Rs.40,00,000/- allowed to be withdrawn by the applicants, a sum of Rs.10,00,000/- be invested in the name of minor applicant No.2 – Mast. Kevin Alex Thykatil and Rs.15,00,000/- be invested in the name of minor applicant No.3-Kumari Hazel Alex Thykatil in any nationalised bank in FDR account till they attain the age of majority. From rest of the balance amount of Rs.15,00,000/- the amount of Rs. 5,00,000/- be paid to the applicant No.4-Smt. Rosy Ignatious Thykatil and Rs.10,00,000/- be disbursed in favour of applicant No.1 Smt. Stella Alex Thykatil.

7. The Registry of M.A.C.T. Mumbai shall take requisite steps for disbursement of amount in favour of applicants-original claimants as directed above and forward report of compliance to this Court.

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

(K. K. SONAWANE, J.)