

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

**CIVIL APPLICATION NO. 524 OF 2018
IN
FIRST APPEAL NO. 779 OF 2016**

Savitridevi Rajendraprasad Gupta & Ors. ... Applicants

IN THE MATTER OF
New India Assurance Co. Ltd. ... Appellant

V/s.
Savitridevi Rajendraprasad Gupta & Ors. ... Respondents

Mr. T.J. Mendon for the Applicants and Respondent Nos. 1 to 7.
Mr. D.S. Joshi for the Appellant-Assurance Company.

CORAM : K.K. SONAWANE, J.

DATE : 14th AUGUST, 2018.

P.C. :

1 Heard the learned Counsel for the applicants-original claimants and the learned Counsel for the appellant-Insurance Company. No one else appeared on behalf of rest of the respondents. The applicants-original claimants preferred the present application seeking permission to withdraw the compensation amount of Rs.12,39,118/- deposited before the M.A.C.T. Mumbai in Claim Application No.3454 of 2008. The applicants are the widow and children of the deceased Rajendraparasad Gupta who breathed his last in a vehicular accident on 03.12.2008. The learned Tribunal after

appreciating evidence on record allowed the claim Petition partly and directed the respondent i.e. owner and the insurer of the offending vehicle to pay the compensation. Pursuant to the impugned judgment and award, the appellant-Insurance Company deposited the amount of compensation before the learned Tribunal. The claimants are seeking permission to withdraw the same.

2 Learned Counsel for respondent-Assurance Company raised an objection and submits that the entire award passed by the learned Tribunal is erroneous and illegal and not within the purview of law. The total amount of compensation determined by the Tribunal is not according to the evidence on record. The exorbitant and excessive compensation was awarded by the Tribunal. Deceased Rajendraprasad Gupta was 68 years old doing the private business. The learned Tribunal committed error in deducting the amount for personal expenses as well as application of multiplier to calculate the amount of compensation. Therefore, the learned Counsel for Insurance Company requested not to allow the applicants-claimants to withdraw the amount. He insisted for final hearing of the appeal on merit.

3 Having given anxious consideration to the argument on both sides, I do not find it justifiable to keep stranded the claimant awaiting for availing benefit of the impugned award till finality of the appeal on merit. In view of reasons mentioned in the application as well as the grounds of

appeal propounded on behalf of appellant-Insurance Company, I find it justifiable to allow the applicants-claimants to withdraw atleast 50% of the compensation amount deposited in this matter. Definitely it would provide some sort of solace to the applicants-claimants and also facilitate to protect the interest of the appellant-Insurance Company in case of its success in the appeal. Hence, application deserves to be allowed partly.

4 Accordingly, the application stands allowed partly. The applicants are hereby permitted to withdraw the lump sum amount of Rs.6 lakhs from the total sum of compensation deposited in this matter on behalf of appellant-Insurance company subject to condition that the applicants-claimants shall furnish the undertaking that they would refund the amount so withdrawn forthwith in case any contingency arises in the appeal. The rest of the balance decretal amount lying before the M.A.C.T. Mumbai be invested in F.D.R. account in any nationalized bank for a period of two years or till decision of the appeal on merit whichever is earlier subject to renew the F.D.R. in future if required.

5 It is further stipulated that from the total sum of Rs.6 lakhs, Rs.3 lakhs be paid to the applicant-claimant No.1-widow Smt. Savitridevi Rajendraprasad Gupta and rest of the applicant-original claimant Nos.2 to 7 be paid Rs.50,000/- each from the balance amount of Rs.3 lakhs remains to be disbursed as per aforesaid directions issued by this Court.

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

7 With the aforesaid observation, the Civil Application stands disposed of.

8 The learned Counsel for applicant contends that the record and proceeding of the impugned judgment and award has already been received to this Court for final hearing of the appeal on merit. The learned Counsel requested to remit back the same to the concerned Tribunal to facilitate the claimant for withdrawal of the amount of compensation as directed above.

9 In view of aforesaid submission registry of this Court to do the needful and sent back the record and proceeding of the concerned appeal to the Trial Court accordingly with request to the concerned Tribunal to forward the record and proceeding to this Court immediately after compliance of the aforesaid order.

(K.K. SONAWANE, J.)