

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application NO.1009/2019
in
First Appeal No.918/2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. Rahul Kadam for the Applicant
Ms. Poonam Mittal for the Appellant

CORAM: K.K.TATED, J.
DATED : SEPTEMBER 6, 2019

P.C.

1 Heard. By this Civil Application the Applicant is seeking permission to withdraw the amount deposited by the Applicant Insurance Co. to satisfy the judgment and award dated 31.08.2016 passed by the MACT, Baramati in MACP No.230/2014.

2 The learned counsel for the Applicant submits that in an accident which occurred on 09.07.2014 the Applicant No.1 lost her husband who was 38 years old. He submits that the deceased was working as a Driver and getting monthly salary of Rs.7000/-. Apart from that he was doing

agricultural activities. He submits that the total annual income of the deceased was Rs. 3 lacs. Hence, the Applicant had made an Application u/s.166 of the Motor Vehicles Act, 1988 claiming sum of Rs.15 lacs by way of compensation with interest @ 18% p.a.

3 The learned counsel for the Applicant submits that, the Tribunal, considering the income of the deceased as Rs.4000/- pm, awarded only sum of Rs.9,80,000/- by way of compensation with interest @ 9% p.a. He submits that the First Appeal may take its own time for hearing and final disposal. Hence, the Civil Application.

4 The learned counsel for the Applicant submits that Applicant No.1 is housewife and she is doing agricultural activities. He submits that the Applicant No.2 Niranjana Annaso @ Popat Magar left his education and Applicant No.3 Nikhil Annaso @ Popat Magar is taking education. It is very difficult for them to survive. He submits that pending the hearing and final disposal of the First Appeal they may be permitted to withdraw the amount deposited by the

Insurance Co. He submits that if the application is not allowed, irreparable loss will be caused to them.

5 On the other hand, the learned counsel for the Appellant has vehemently opposed the Civil Application. She submits that in the present proceedings though the Applicant has stated in their application that the deceased was earning near about 7000/- pm salary as Driver they failed to place on record any documentary evidence. Hence, the Tribunal has considered sum of Rs.4000/- pm income of the deceased for deciding the compensation.

6 It is to be noted that in the present proceedings the Appellant Insurance Co. challenges the impugned judgment and award on the basis of the quantum only. There is no dispute that the Applicant lost her husband in the accident. At that time the deceased was 30 years old and he was a Driver by occupation. Moreover, he was also doing agricultural activities.

7 Considering these facts and the averments made in the Civil Application I am satisfied that the Applicant has made out a case for allowing them to withdraw some amount pending the hearing and final disposal of the First Appeal.

8 Hence, following order is passed:

a. The Civil Application is allowed in the following terms:

(i) The Applicants are permitted to withdraw the following amount with accrued interest without furnishing any security but subject to outcome of the First Appeal.

(ii) Smt. Manisha Annasao @ Popat Magar - Rs. 2,40,000/-

(iii) Niranjan Annasao @ Popat Magar Rs.1,25,000/-,

(iv) Nikhil Annasao @ Popat Magar Rs.1,25,000/-

b. The Tribunal is directed to invest the remaining amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the appeal.

c. Liberty granted to the claimants to prefer an appropriate Application for withdrawal of further amount, if they so desire, which will be decided on its own merits.

d. The Civil Application stands disposed of accordingly.

e. No order as to costs.

(K.K.TATED, J.)