

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 904 OF 2019
IN
FIRST APPEAL No. 346 OF 2019

Smt. Saeeda Ahalavali Shaikh and Ors. ...Applicants

In the matter between

The Assistant Divisional Controller
Uttar Pradesh Road Transport Corporation ...Appellant

Vs.

Smt. Saeeda Ahalavali Shaikh and Ors. ...Respondents

Mr. Pritesh Bohade for Applicants
Mrs. Karishma Jhaveri i/b. Navdeep Vora and Associates for Appellant
U.P.S.R.T.C.

CORAM: K.K. TATED, J.

DATED : JUNE 14, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this civil application, the Applicants-Original Claimants are seeking permission to withdraw the amount deposited by the Appellant-Insurance Company as per the judgment and award dated 4th July, 2014 passed by the Motor Accident Claim Tribunal at Nashik in M.A.C.P. NO. 809 of 2010.
3. Learned counsel for the Applicants submits that, the accident occurred on 22nd June, 2010, in which Applicant No.1 lost her son – Ahalavali Fakir Mohammad Shaikh, who was just 28 years' old on that date. He submits that the deceased was running a garage. Therefore,

Applicants filed application under Section 166 of the Motor Vehicles Act for claiming compensation of Rs.10,00,000/-. He submits that the Tribunal after considering the evidence on record, held that the Claimants are entitled sum of Rs.18,21,400/- by way of compensation.

4. Learned counsel for the Applicants submits that, Applicant No.1 is a widow and household wife. He submits that Applicant have to take care of her three sons, those who are taking education. He submits that Applicant No.1 do not have any source of income and, therefore, she has filed the present civil application.

5. Learned counsel for the Applicants submits that even Applicant Nos. 5 and 6 are the senior citizens. He submits that they lost their son in accident. He submits that even the Applicant Nos. 5 and 6 do not have any source of income. Hence, they have filed the present application for withdrawing some awarded amount. He submits that in the interest of justice, this Hon'ble Court, be pleased to permit the Applicants to withdraw some amount. He submits that if the application is not allowed, irreparable loss would be caused to them.

6. On the other hand, learned counsel Mrs. Karishma Jhaveri for the Appellant -Insurance Company vehemently opposed the present civil application. She submits that in the present present proceeding, they are challenging the judgment and award passed by the Tribunal on the basis of quantum and negligence. She submits that the Tribunal failed to consider the fact that the Original Claimants failed to produce any cogent evidence to show that, they are entitled to sum of Rs.18,21,400/- by way of compensation with interest @7% p.a.

7. Learned counsel for the Appellant submits that they have good chance of success in the present proceedings. She submits that if the

entire awarded amount is withdrawn by the Applicants, then nothing will survive in the present First Appeal and it will be difficult to them to recover the amount from the Claimants, if they succeed in the present proceedings. Hence, she submits that the civil application required to be dismissed with costs.

8. I heard both the sides at length. It is to be noted that in the present proceedings, in accident, Applicant No.1 lost her husband, who was just 28 years' old on the date of accident. He was running a garage. Apart from that, Applicant No.1 is a household wife. She has to maintain three minor children. One of them i.e. Applicant No.2 is taking education. Not only that, Applicant Nos.5 and 6 are the senior citizens. Considering these facts and as the Appellant is challenging the judgment and award on the basis of quantum and negligence only, I am of the opinion that the Applicant Nos.1,2,5 and 6 can be permitted to withdraw 50% awarded amount of their share with accrued interest thereon without furnishing any security, but subject to outcome of the First Appeal.

9. Hence, following order:

- (a) Applicant No.1 Smt. Saeeda Ahalavali Shaikh, Applicant No.2 Soheel Ahalavali Shaikh, Applicant No.5 -Shri Fakir Mohammad Jafar Shaikh and Applicant No.6- Chandbi Mohammad Fakir Shaikh are permitted to withdraw 50% awarded amount along with accrued interest thereon of their share without furnishing any security but subject to outcome of the First Appeal.
- (b) The Tribunal is directed to invest the remaining awarded amount in a fixed deposit of any Nationalized Bank, initially, for a period of one year and same to be continued till further orders.

- (c) Liberty is granted to the Applicants, if they so desire, to file an application for further withdrawal of the awarded amount and that application be heard on its own merits.
- (d) Civil Application stands disposed of accordingly.
- (c) No order as to costs.

(K. K. TATED, J.)