

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
CIVIL APPLICATION NO.2622 OF 2018
in
FIRST APPEAL NO.885 OF 2014**

1.Sayyad Khajamiya Sayyad Nabisah & anr.. Applicants

IN THE MATTER OF

The Municipal Corpn of Gr.Mumbai .. Appellant
vs

1.Sayyad Khajamiya Sayyad Nabisab & anr.. Respondents

Mr.Omkar Paranjpe I/b Mr.Avinash Gokhale for Applicants
Ms.Karishma Jhaveri I.b M/s Anavdeep Vora & Asso.
for Respondents.

***CORAM : K.K.TATED , J
DATE : 9th April, 2019***

P.C

Heard learned counsel for the parties.

2. By this Civil Application, the Applicant/original Claimant is seeking permission to withdraw the amount deposited by the appellant in the present proceedings.

3. Learned counsel for the applicant submits that the accident which occurred on 28.1.2006, the applicant lost their 22 years son who was working as a driver of an autorickshaw. He submits that at that time he was earning Rs.8000/- p.m. He submits that because of the accident,

the applicant filed Claim Application under section 166 of the Motor Vehicle Act, 1988 claiming compensation on account of death of their son. He submits that the trial Court after considering the evidence held that the driver of the BEST Undertaking was responsible for the said accident, as recorded in para 10 of the impugned Judgement awarding a sum of Rs.3,34,000/- by way of compensation with 7.5 % interest p.a.

4. Learned counsel for the applicant submits that both the Claimants do not have any fixed work. They are working on daily wages as a labourer. He submits that because of death of their only son, it is difficult for them to maintain themselves for the day-to-day expenses. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the applicant to withdraw the amount deposited by the appellant in the present proceedings. He submits that the First Appeal will take its own time for hearing and final disposal.

5. On the other hand, learned counsel appearing for the Appellant vehemently opposed the present Civil Application. She submits that they have filed their affidavit-in-reply dated 5.4.2018. She submits that the Tribunal erred in coming to the conclusion that the driver of the bus was responsible for the accident. Hence, there is no question of allowing the applicant to withdraw the amount deposited by them. She submits that if the entire amount is withdrawn, then it will be very difficult to recover the same. She submits that they have a good chance of succeed in the present matter.

6. I have heard both the learned counsel.

7. It is to be noted that the driver of BEST Undertaking was responsible for the accident in which the applicant lost their only son of 22 years. At that time the deceased was earning Rs.8000/- per month.

8. Considering the submissions made by the learned counsel for the applicant and averments made in the Civil Application, I am satisfied that a case is made out for withdraw of the amount without furnishing any security. Hence, following order :

O R D E R

(A) Both the applicants (Original claimants) are permitted to withdraw 15% each of the total deposited amount, by the appellant, without furnishing any security.

(B) Civil Application stands disposed of accordingly.

{K.K.TATED, J}