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

**CIVIL APPLICATION NO. 2838 OF 2018
IN
FIRST APPEAL (STAMP) NO. 24151 OF 2017**

Shri Hemraj Dulchand Jain & Ors. .. Applicants
Vs.
The New India Assurance Co. Ltd. .. Respondents

Mr. Omkar Paranjape I/b Avinash M. Gokhale for the Applicants.
Ms. Aarti Taware I/b Milind V. More for the Respondent.

CORAM : K. K. TATED, J.
DATE : 3rd APRIL, 2019.

P. C. :

1. Heard learned Counsel for the parties.

2. By this Civil Application, the Applicants-original Claimants are seeking permission to withdraw 2/3rd amount deposited by the Insurance Company before the Tribunal. Learned Counsel for the Applicants submits that in an accident which occurred on 13.09.2010, Claimant No.1 lost his wife and Claimant Nos.2 and 3 their mother. The learned Counsel for the Applicants submits that Applicant Nos.2 and 3 are students. They are taking education. He submits that they require the amount for their education purpose. In support of his contention, the learned Counsel for the Applicants placed on record the list of documents as under:

1. Copy of B. Com Mark sheet (sem.-6) of Respondent No.2.
2. Copy of M. Com Registration of Respondent No.2.
3. Copy of B. Com Mark sheet (sem.-6) of Respondent No.3.
4. Copy of IPCC Registration of Respondent No.3.

5. Copy of IPCC GRP-1 passing Mark sheet of Respondent No.3.

6. Copy of IPCC GRP-2 passing Mark sheet of Respondent No.3.

3. Learned Counsel for the Applicants submits that in the interest of justice, this Hon'ble Court be pleased to allow the Applicants to withdraw 2/3rd amount deposited by the Insurance Company.

4. On the other hand, learned Counsel Ms. Aarti Taware appearing for the Insurance Company vehemently opposed the present Civil Application. She submits that if the entire amount is withdrawn by the Claimants, then nothing will survive in the present First Appeal. She further submits that, if the Insurance Company succeeds in the First Appeal, then it will be very difficult for them to recover the amount from the Claimants. Therefore, there is no question of permitting them to withdraw 2/3rd amount as claimed by the Claimants.

5. I heard both the sides at length. It is to be noted that in the present proceeding, Claimant No.1 lost his wife whereas Claimant Nos.2 and 3 lost their mother. Claimant Nos.2 and 3 are taking education. In support of that contention, learned Counsel for the Applicants placed on record certain documents.

6. Considering the submission made by learned Counsel for the Applicants and averments in the Civil Application, I am satisfied that the Applicants have made out case for withdrawal of some amount during the

pendency of the First Appeal.

7. Hence, the following order:

- (i) Applicant No.1 Shri Hemraj Dulchand Jain, Applicant No.2- Kumar Praful Hemraj Jain and Applicant No.3 Kumar Lav Hemraj Jain are entitled to withdraw sum of Rs.2,50,000/- each with accrued interest on personal undertaking that they will bring the entire amount with interest, if the Court directs them to do so at the time of hearing of First Appeal.
- (ii) Civil Application stands disposed of accordingly.
- (iii) No order as to costs.

[K. K. TATED, J.]