

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1040 OF 2019
IN
FIRST APPEAL ST. NO. 19910 OF 2015

Smt. Swati Madhukar Mandale and Ors ... Applicants
(Original Respondents)
in the matter between

The New India Assurance Co. Ltd. ... Appellant
v/s.
Smt. Swati Madhukar Mandale and Ors ... Respondents

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Mr. Amey V. Chandorkar i/b Rajesh A. More for the Applicants.
Mr. Devendranath S. Joshi for the Appellant.

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CORAM : K. K. TATED, J.
DATED : AUGUST 29, 2019

P.C.:

1. Heard Learned Counsel for the parties.
2. By this Civil Application, the Respondents/Claimants are seeking permission to withdraw the amount deposited by Insurance Company to satisfy the Judgment and Award dated 28th January, 2015 passed by the MACT, Pune in MACP No. 665 of 2011.
3. Learned Counsel Mr. Amey V. Chandorkar for the Applicant(Org. Respondent)/Claimants submits that in an accident which occurred on 9th May, 2011, the Claimant no. 1 lost her husband.

He further submits that, on the date of accident, deceased was 31 years old and he was working as a driver and getting Rs. 8,600/- per month as salary. He submits that, Claimant no. 1 is household wife and Claimant nos.3 and 4 are senior citizens. It is difficult for Claimant no. 1 to maintain her minor child as well as parents of deceased. Therefore, she filed the present application for withdrawal of amount for herself as also on behalf of her in-laws. He further submits that in the interest of justice this Hon'ble Court be pleased to permit the applicant to withdraw the amount deposited by the Insurance Company.

4. On the other hand, the learned counsel Mr. Devendranath S. Joshi for the Org. Appellant submits that in the present proceedings, the Tribunal erred in coming to the conclusion that, the Respondents/claimants are entitled to compensation of Rs.14,38,000/- with interest. He submits that the claimants failed to place on record any evidence to show that, the deceased was earning of Rs.8,600/- p.m. He submits that if the entire amount is withdrawn by the claimants nothing will survive in the present proceedings. Therefore, there is no question of allowing the Civil Application.

5. I have heard both the parties. It is to be noted that in the present proceedings, Claimant no. 1 lost her husband in the accident occurred on 9th May, 2011. On that date, the deceased was 31 years old. In this case, claimant no. 1 is household wife. She has to

maintain her minor child and her in-laws. Considering these facts, I am of the opinion that, the Claimants be permitted to withdraw some amount during the pending of present First Appeal. Hence following order:

A) Applicants/Claimants are permitted to withdraw the following amounts with accrued interest without furnishing the surety but subject to the final outcome of the First Appeal:

- a) Claimant No. 1 Smt Swati@ Savita Madhukar Mandale, 20%.
- b) Claimant No. 3 Sou. Yamunabai Shahaji Mandale, 10%.
- c) Claimant No. 4 Shri Shahaji Bajirao Mandale, 10%.

B) The Tribunal is directed to invest the remaining amount in fixed deposit of any nationalised bank, initially for a period of one year and same to be continued till further orders.

C) Civil Application allowed accordingly.

D) No order as to costs.

(K. K. TATED, J)