

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

**CIVIL APPLICATION NO.2571 OF 2019
IN
FIRST APPEAL NO.532 OF 2019**

IFFCO TOKIO General Insurance
Co. Ltd.

..Applicant

V/s.

Baban Shankar Kalyankar & Ors.

.. Respondents

Mrs.Varsha Chavan for the Applicant.

Mr.Yuvraj P. Narvankar for the Respondents.

CORAM : K.K. TATED, J.

DATE : 30th JULY 2019

P.C.

1. Heard learned counsel for the parties.

2. By this Civil Application, applicant-claimants are seeking permission to withdraw the amount deposited by the insurance company to satisfied the judgment and award dated 06.12.2014 passed by the MACT, Satara in MACP No.609 of 2010.

3. The learned counsel for the applicant submits that in a accident which occurred on 12.09.2010. Applicant has lost his young son aged 26 years. He submits that, the deceased was

earning a sum of Rs.15,000/- per month. Therefore, they have filed an application under Section 166 of the Motor Vehicle Act claiming compensation. He submits Trial Court considering the evidence on record held that claimants are entitled for a sum of Rs.20,38,449/- by way of compensation with interest.

4. The learned counsel for the applicant submits that both the claimants are senior citizens. He submits that both of them require the amount for day to day requirements. For this contention, he relies upon paragraph 8 of the Civil application.

5. On the basis of this submission the learned counsel for the applicant submits that, applicant may be permitted to withdraw the amount deposited by the insurance-company.

6. On the other hand the learned counsel appearing on behalf of the appellant-insurance company vehemently opposed the present Civil Application. She submits that in the present proceedings the respondent and the applicants have placed on record the certified copy of the FIR at Exhibit 43 and the spot panchnamma at Exhibit 44. She submits that the original claimant has failed and neglected to prove the fact that, whether the

deceased was driving the motor vehicle. Unless and until this fact is made clear, there is no question of allowing the claim to withdraw the amount. She further submits that if entire amount is withdrawn by the claimants, nothing will survive in the present proceedings. Hence, she submits that there is no substance in the present Civil Application, and same is required to be rejected.

7. In this present proceedings the accident has occurred on 12.09.2010. The applicant lost their young son of 26 years old. At that time he was earning Rs.15,000/- per month.

8. Considering these fact and as both the claimants are senior citizens, I am of the opinion that they can be permitted to withdraw some amount during pendency of the appeal, hence, following order.

ORDER

(i) Both the applicants are permitted to withdraw 15% of total compensation with interest each without furnishing any security, but subject to the outcome of the First Appeal.

(ii) The Tribunal is directed to invest the remaining amount in fixed deposit of any Nationalized Bank for one year and same to be continued till further orders.

9. Civil Application is disposed of accordingly. No order as to costs.

(K.K. TATED, J.)