

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

**CIVIL APPLICATION NO. 2130 OF 2018
IN
FIRST APPEAL NO. 853 OF 2018**

Varsha Sandeep Sabale & Ors.Applicants

In the matter between :-

The New India Assurance Co. Ltd.Appellant

V/s.

Varsha Sandeep Sabale & Ors.Respondents

Mr. Ketan Joshi for the appellant in FA 853/2018 and for
R.No.1 in CAF 2130/2018.

Mr. Yuvraj Narvankar for R.Nos.1, 4 to 6 in FA 853/2018
and for the applicant in CAF 2130/2018.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 01st MARCH, 2019.**

P.C.:

. Heard the learned counsels for the respective parties.

2. By this application, the applicants have sought to withdraw the amount deposited by the appellant / insurance company before the MACT, Kolhapur.

3. By judgment and award dated 04/09/2015, the MACT has awarded compensation of Rs.59,69,913/- inclusive of no fault liability with interest @ 9% p.a. from the date of the filing the petition till

realization. Out of the said total compensation, the Tribunal has ordered to pay Rs.15,00,000/- each to the claimant nos.1, 2 and 3 being the widow and minor children of the deceased. The amount of Rs.5,00,000/- each was ordered to be paid to the claimant no.4 and 5 being the parents and Rs.4,00,000/- was ordered to be paid to the sister of the deceased.

4. Mr. Ketan Joshi, the learned counsel for the appellant / insurance company has opposed withdrawal mainly on the ground that the insurance company has denied involvement of the vehicle in the accident.

5. I have perused the records as well as the findings recorded in the impugned judgment. The Tribunal, after appreciating the evidence has observed that the crime was registered against the respondent no.3 for driving the offending vehicle in a rash and negligent manner and that after investigating the said crime, charge sheet has been filed against him for offences under Section 279 and 304(A) of the Indian Penal Code and Section 184 and 134 (1) (b) of Motor Vehicles Act. The learned Judge has further observed that the respondent nos.2 and 3, the owner of the driver of the offending vehicle have not come forward

to claim that the vehicle was not involved in the accident and/or to show that the respondent no.3 has been falsely implicated. Be that as it may, considering the reasons stated in the application and also the grounds raised in the appeal and after perused the reasons stated in the impugned order, withdrawal is allowed as under :-

(a) an amount of Rs.7,00,000/- is ordered to be paid to the applicant no.1 – Varsha Sandeep Sabale.

(b) an amount of Rs.2,00,000/- each is ordered to be paid to the applicant nos.4 and 5 – Maruti Bhimaji Sabale and Anjana Maruti Sabale.

(c) an amount of Rs.2,00,000/- is ordered to be paid to the applicant no.6 – Sunanda Maruti Sabale.

(d) The claimant nos.2 and 3 are minors and hence, in the interest of these two minors, no amount is allowed to be withdrawn on their behalf.

6. The Tribunal to invest the balance amount in any nationalized bank till the disposal of the appeal. It is made clear that the payment is subject to the final outcome of the appeal. The applicants shall give an undertaking before the Tribunal that they shall abide by the order

that may be passed in the appeal.

7. Civil Application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)