

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
CIVIL APPLICATION NO.3834 OF 2017
in
FIRST APPEAL (St) NO.15749 of 2017**

1.Kiswarjahan Shakir Hussain Khan & ors . Applicants

vs

The General Manager,
BEST Mumbai

.. Respondents

Ms.Varsha Chavan for Respondent in FA and C.A.1793/2017
and for Applicant in CA No.3834/2017

Mr.Madhukar Kalzunkar with Ms.Chaitali Kandare
I/b M/s Navdeep Vora & Asso.for Respondents

CORAM : K.K.TATED, J

DATE : 25th MARCH, 2019

P.C

Heard learned counsel for the parties.

2. By this Civil Application, the applicant is seeking permission to withdraw the amount deposited by the insurance company-Bombay Electric Supply Company Ltd in the present proceedings.

3. Learned counsel for the applicants submit that when the accident occurred on 11.10.2012 at that time, the applicant lost her husband who was then 38 years old. He was a scrap dealer and used

to earn Rs.2,30,000/- p.a.from the said business.

4. Learned counsel for the applicants submits that applicants has to maintain her two minor children, one daughter and mother-in-law also. She requires the amount. She further submits that the applicant has no source of income. Hence, this Hon'ble Court be pleased to allow the applicants to withdraw the amount which was deposited in the Tribunal.

5. On the other hand, learned counsel Mr.Kalzunkar vehemently opposed the Civil Application. He submits that although the Tribunal holds them responsible to pay the compensation, on the basis of the statement made by the other side. He submits that even in the panchanama referred by the trial Court in para 9 do not clearly show that the bus driver was at fault and therefore liable to pay the amount. He submits that if the applicant be permitted to withdraw the amount without furnishing any security and if the BEST succeeds in the First Appeal, then it will be very difficult to recover the entire amount.

6. I have heard learned counsel for the parties.

7. It is to be noted that at the time of the accident, the deceased was 38 years old. He was earning Rs.2,30,000/- p.a. Apart

from that at present, the applicant has two minor daughters as well as mother-in-law.

8. Considering these facts, I am of the opinion that the applicants may be permitted to withdraw the amount. Hence the following order :

O R D E R

(i) The applicant is permitted to withdraw 25% of the amount deposited by the insurance company without furnishing any security.

(ii) Liberty to the other applicants to prefer an application if they so desire, for withdrawal of the amount and that will be decided on its own merits.

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

{K.K.TATED, J}