

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 304 OF 2019
IN
FIRST APPEAL NO. 418 OF 2016
IN
M.A.C.P. APPLICATION NO. 381 OF 2012

Gautam Girish Nair ... Applicant

In the matter between :

Divisional Manager,
The New India Assurance Co. Ltd. ... Appellant

Versus

Girish Gopal Nair and Ors. ... Respondents

Mr. D.R. Mahadik for the Appellant.

Mr. Rupesh Geete I/by Parinam Law Associates for respondent
nos. 1 to 3.

CORAM : B.P. DHARMADHIKARI &
SMT ANUJA PRABHUDESSAI, JJ.
DATE : FEBRUARY 13, 2019

P.C.:

Heard learned counsel for the applicant who is claimant no.2 in MACT and learned counsel for the Insurance company. The applicant Gautam is a student taking education of Engineering at Verginia Tech and seeks leave to withdraw the entire amount of Rs. 65 lacs with interest accrued upon it, to meet the expenditure of his education. Counsel for the applicant

is relying upon the additional affidavit and documents filed with it to explain the annual requirement of about Rs. 30 lacs to undergo the education.

2. He also points out that applicant is already a student there and present application is moved by him through his power of attorney father who happens to be the claimant no. 1.

3. Learned counsel for the Insurance Company submits that the appeal under section 173 of the Motor Vehicles Act is filed by the Insurance Company, not only on the ground of negligence but also challenging the quantum of compensation. He submits that the total amount of compensation granted to the claimants in the year 2015 which is about Rs.1,87,20,172 with interest is exorbitant. He also requests the Court to protect the Insurance Company. The MACT has granted compensation to father of Rs.57,20,172/- while two children have been awarded compensation of Rs. 65 lacs each. The applicant before us is claimant no. 2.

4. The documents filed with the application and additional affidavit shows status of the claimant no.2 as a student taking education with the College of Engineering at Verginia Tech. The documents also show that he has paid an amount in excess of Rs.23 lacs towards tuition fees only. He may require additional

amount to stay there.

5. We cannot at this stage ignore the fact that the claimant no.2 does not require the entire amount in one lump sum. The next payment is to be made in next educational year. At the same time, the amounts payable to other claimants are still not withdrawn by anybody. The Insurance Company has submitted that the father of the claimant no.2 is a rich person and can independently support the education of applicant/claimant no. 2. The argument is erroneous as the amount awarded belongs to applicant/claimant no. 2.

6. Taking overall view of the matter, we direct the applicant/claimant no.2 to withdraw the amount of Rs.30 lacs from the total amount in deposit out of his share, after furnishing his personal undertaking that in case this court orders refund, he shall do so within four weeks with such interest as the court may in that event order. Similarly, his power of attorney, namely father, shall also file an undertaking that he shall refund the amount as ordered by this court for and on behalf of his son applicant/claimant no.2, if the occasion therefor arises.

7. Subject to these undertakings, permission to withdraw the amount of Rs.30 lacs is granted. The amount shall be deposited in the bank account of applicant Gautam directly by the Office of

MACT, Pune.

8. The applicant is also given liberty to file an application afresh for paying the balance fees, if any occasion therefor arises.

9. Civil Application is accordingly partly allowed and disposed of.

(SMT. ANUJA PRABHUDESSAI, J.) (B.P. DHARMADHIKARI, J.)

** Modified as per Speaking to Minutes of order dated 14/06/2019.*