

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.4398/2018

in

First Appeal No.699/2015

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
Mr. Vijay Killedar for the Applicant Mr. Sandeep S. Jinsiwale for the Respondent	

CORAM : K.K.TATED, J.
DATED : JUNE 28, 2019

P.C.

1 Heard. By this Civil Application, the Applicant claimant is seeking permission to withdraw the amount deposited by the Insurance Co. to satisfy the judgment and award dated 29.12.2014 passed by the MACT Pune at Pune in MACP No.398/2006.

2 The learned counsel for the Applicant submits that as per earlier order they filed additional affidavit in support of the Civil Application on 09.04.2019.

3 The learned counsel for the Applicant submits that in an accident

which occurred on 25.01.2006 the Applicant Nos.1 and 2 lost their son who was 25 years old. He was a skilled Computer Engineer and getting Rs.51,328/- monthly salary. Therefore, the Applicant filed an application for compensation of Rs.1,07,00,000/- u/s. 166 of the Motor Vehicles Act, 1988. He submits that the Tribunal, after considering the evidence on record held that the claimants are entitled to sum of Rs.64,58,500/- by way of compensation with 9% p.a. interest.

4 The learned counsel for the Applicant submits that the Applicant Nos.1 and 2 are senior citizen and Applicant Nos.3 and 4 are taking education. He submits that they have no source of income except the pension of Applicant Nos.1 and 2. He submits that it is very difficult for them to bear their day to day expenses. Therefore, they may be permitted to withdraw some amount during pendency of the First Appeal. She submits that the First Appeal will take its own time. He submits that the Tribunal, by the impugned judgment and award directed the Insurance Co., first to pay the

amount of compensation to the claimant and recover the same with interest from the owner of the offending vehicle.

5 The learned counsel for the Appellant Insurance Co. has vehemently opposed the Civil Application. He submits that in the present proceedings they are challenging the impugned judgment and award on the ground that at the time of accident the driver of the offending vehicle was not holding a valid license. In support of this contention, he relied on paragraph No.56 of the impugned judgment and award. He submits that in view of these facts, there is no question of allowing the Civil Application.

6 It is to be noted that the Applicant Nos.1 and 2 lost their son who was of 25 years old. The Applicant Nos.1 and 2 are senior citizen and Applicant Nos.3 and 4 are taking education. Apart from that the Tribunal by the impugned judgment and award directed the Insurance Co. to deposit the compensation and then recover the same from the owner of the offending vehicle. Hence, I am of the opinion that the Applicant has made out

a case for partly allowing the Civil Application.

7 Hence, following order is passed:

a. Applicant Nos.1 to 4 are entitled to 50% compensation of their share along with interest without furnishing any security, subject to outcome of the First Appeal.

b. The Tribunal is directed to invest the remaining amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the appeal.

c. Liberty granted to the claimants to prefer an appropriate Application for withdrawal of further amount, if they so desire, which will be decided on its own merits

d. The Civil Application stands disposed of accordingly. No order as to costs.

(K.K.TATED, J.)