

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

**CIVIL APPLICATION NO. 739 OF 2018
IN
FIRST APPEAL NO. 1259 OF 2011**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	J. S. Yadav i/b Vilas Tapkir for the Applicants. Shakib Dhorajiwala i/b Vidhi Partners for the Appellant.

**CORAM: K.K.TATED, J.
DATED : OCTOBER 15, 2019**

P.C.

1 Heard.

2 By this Civil Application, the Applicants/ Original Claimants are seeking permission to withdraw the remaining amount deposited by the Appellant to satisfy the Judgment and award dated 07/01/2011 passed by the Motor Accident Claims Tribunal, Pune in Motor Accident Claim Petition No. 1089/2004.

3. In the present proceeding, in the accident which occurred on 24/06/2005, the Claimant sustained injuries and she filed claim Petition under Section 166 of the

Motor Vehicles Act, claiming a sum of Rs. 5,00,000/-. During the pendency of the Petition, the Original Claimant expired on 24/06/2005 and thereafter, the Applicants legal heirs brought on record as a Claimants. The Tribunal after considering the evidence on record held that the Claimants are entitled a sum of Rs. 12,20,993/- by way of compensation with interest @ 6% p.a.

4. First Appeal is already admitted by this Court. It is to be noted that, in the present proceeding, this Court by order dated 26/04/2012 in Civil Application No. 1051/2012 permitted Smt. Lata Walmik Borawane, Vidya Walmik Borawane and Atul Walmik Borawane to withdraw a sum of Rs. 2,00,000/- each. Thereafter, the Applicants preferred Application No. 353/2017 for withdrawal of a sum of Rs. 2,00,000/- on the ground that the Applicant No. 1(c) is getting married on 11/02/2017. This Court by order dated 07/02/2017 in Civil Application No. 353/2017 permitted the Applicant No. 1(c) to withdraw a sum of Rs. 2,00,000/- subject to outcome of the First Appeal.

5. By this Civil Application the Applicants are seeking permission to withdraw the remaining amount on the ground that they

have raised loan from Panavali Vikas Karyakari Seva Sahakari Sanstha Maryadit. They require amount for repayment of the loan and the second ground given by the Applicant is that the Applicant 1(a) and 1(c) residing on rental basis and hence, they decided to construct the house at village Panavali, Tal. Daund for their own use. These ground are given by the Applicant in Para. 9 and 10 of the Civil Application which reads thus:

“9. The Applicants say that already the Applicants herein has raised aloan from Panavali Vikas Karyakari Seva Sahakari Sanstha Maryadit and for the purpose of repayment of the loan, it is necessary to withdraw the amount.

10. The Applicants say that also at present the Applicant No. 1(a) and 1(c) are residing on rent basis and Applicant is now decided to construct a house at village Panavali, Tal. Daund and accordingly, quotation has been given by the developer.”

6. The Learned Counsel for the Applicants submits that, in the interest of justice, this Hon'ble Court be pleased to allow the Applicants to withdraw the remaining amount deposited by the Appellant. He submits that if the Application is not allowed irreparable loss will cause to them.

7. On the other hand, the Learned Counsel for the Appellant vehemently opposed the present Civil Application. He submits that, the Applicant already withdrawn more than 2/3 amount awarded by the Tribunal. He submits that if the entire amount is withdrawn by the Claimants then nothing will survive in this First Appeal. He submits that they have good chance of success in the present matter. There no question of allowing the Applicants to withdraw further amount.

8. Heard both sides at length. Admittedly, in the present proceeding, the Applicant already withdrawn more than 2/3 amount awarded by the Tribunal without furnishing any security. If further amount is permitted to withdraw and that also for repayment of the loan and for construction of the house then nothing will survive in the First Appeal. Apart from that, if the Appellant succeeds in the First Appeal, then it will be very difficult for them to recover the entire amount from the Applicants. Considering these facts, I do not find any substance in the present Civil Application. Hence, the following order:

- a. Civil Application stands rejected.
- b. No order as to costs.

(K.K.TATED,J.)