

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

920 CIVIL APPLICATION NO.428 OF 2020 IN
FIRST APPEAL (STAMP) NO. 26591 OF 2019

SHOBHA VIJAY GORASE AND OTHERS
VERSUS
GUJARAT STATE ROAD TRANSPORT CORPORATION

...

Mr.A.S. Gandhi, Advocate for applicants.
Mr.M.K. Goyanka, Advocate for respondent.

...

CORAM: V.L. ACHLIYA,J.
DATE : 15.01.2020

ORAL ORDER:

The applicants-claimants moved this application seeking withdrawal of amount deposited by the appellant in terms of the award passed by the Tribunal. The appellant has deposited the amount of Rs.17,55,439/-.

2. Heard learned counsel for the applicants and learned counsel representing the respondent.

3. In brief, it is the contention of learned counsel for the appellant-Corporation that the appellant has good case to succeed in appeal. By referring the overall facts of the case, evidence adduced and reasons and findings recorded by the Tribunal, learned counsel submits that it emerges from record

that two vehicles colluded with each other. Driver of both the vehicles succumbed to injuries. No eye witness to incident was examined by the claimants. The vehicles were already removed before the panchanama was prepared. In absence of any evidence to show that the accident was occurred due to sole negligence of the driver of the vehicle owned by Gujarat State Road Transport Corporation, the Tribunal has fastened liability on the driver of said vehicle. It is submitted that from the evidence on record, it clearly emerges that the case of contributory negligence has been made out. In that view, the Tribunal ought to have apportioned the liability amongst the owners of two vehicles. It is further submitted that the amount of compensation awarded is excessive. The Tribunal has considered the monthly income of the deceased as Rs.10,000/- per month. No proof of income was produced on record. So also owner of the vehicle was not examined in the case on the point of monthly income of deceased.

4. On the other hand, learned counsel for the applicants-claimants support the judgment and order passed by the Tribunal and

submits that the appeal is devoid of merit. It is submitted that the Tribunal has noted in the order that the extensive damage caused to the dumper and dumper driven by the deceased was hit by the driver side of the Bus owned by the appellant. It is further submitted that considering the deceased being qualified driver to drive the dumper, the Tribunal has rightly awarded the compensation by considering the notional income as Rs.10,000/- pm.

5. On due consideration of submissions advanced in the light of reasons and findings recorded by the Tribunal and the order of apportionment passed by the Tribunal, I am of the view that the following order would meet the ends of justice :-

ORDER

(i) The applicant no.1-claimant no.1 is permitted to withdraw the amount to the extent of Rs.4,00,000/-, on furnishing an undertaking to the effect that in the event the award is modified or set aside, the applicant no.1 shall deposit the amount within four weeks.

(ii) After payment of Rs.4,00,000/- to the applicant no.1, the balance amount be

invested in fixed deposit in terms of order passed by Tribunal.

(iii) The interest accrued over the amount invested in the name of applicants be credited in Saving Account of applicant no.1 after every three months so as to maintain herself as well as to take care of her minor children-applicant nos.2 and 3 till further orders from Court.

(iv) The order of withdrawal of amount and payment of interest shall be subject to final decision in appeal.

(v) The applicants will be at liberty to move the Court seeking further withdrawal of amount if the amount is required for educational purpose of applicant nos.2 and 3.

(vi) The Civil Application is disposed of in above terms.

[V.L. ACHLIYA]
JUDGE

SGA