IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 110 OF 2020
IN
FIRST APPEAL STAMP NO. 15708 OF 2016

Smt. Rohini Rajaram Patil & Ors. … Applicants
V/s.
The New India Assurance Co. Ltd. & Ors. … Respondents

Mr. Akshay Prakash Shinde for the Applicants/Appellants.

Mr. Himanshu Takke i/by Mr. Milind V. More for the Respondents.

CORAM : R.D.DHANUKA,J.

DATE : 28th January, 2020.

P.C.:-

1] By a separate order passed by this Court, First Appeal filed by the appellant is already admitted. By this Civil Application the applicants have prayed for withdrawal of amount deposited by the Respondent No.1. Heard learned counsel for the applicants and the original appellant. The appellant has challenged the finding of contributory negligence rendered by the Tribunal in the impugned judgment and award and on other grounds. Learned counsel for the applicants, on the other hand placed reliance on the judgment of the Supreme Court in the case of **M/s. Royal Sundaram Alliance Insurance Company Ltd. V/s. Mandala Yadagari Gaud & Ors.**

(2019) 5 SCC 554, in support of the submission that multiplier has to be applied by Tribunal while computing compensation under section 166 on the basis of the age of the deceased and not on the basis of the age of parents.

2] In my prima-facie view, there is substance in the submission made by the learned counsel for the applicants. Applicants have made out a case for withdrawal of 50% of the amount deposited by the appellant at this stage, however, on filing an undertaking that if the appellant succeeds in first appeal, the applicants would return the amount that would be withdrawn with interest at such rate as this court may direct by subsequent order. Such undertaking shall filed within four weeks from today before the M.A.C.T., Kolhapur in M.A.C.T. No. 250/2013. Copy of the undertaking shall to be served upon appellant's advocate simultaneously.

3] It is made clear that if the undertaking is not filed within four weeks from today, the order passed this Court permitting withdrawal of the 50% amount shall stand vacated without further reference to court.

4] In that event, 50% amount deposited by the appellant shall be invested in nationalized bank initially for a period of five years and thereafter for like period depending upon the pendency of the first appeal. The balance 50% amount shall be invested in Fixed Deposit in the similar manner mentioned aforesaid.

5] Civil Application is allowed on aforesaid terms. Parties as well as M.A.C.T., Kolhapur to act upon authenticated copy of this order.

[R.D.DHANUKA, J.]