

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 1004 OF 2021
IN
FIRST APPEAL STAMP NO. 14734 OF 2020**

Urmila Wd/o Hanuman Gaikwad and others ... Applicants

Versus

Union of India and another ... Respondents

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Mr. M. P. Kale, Advocate for the applicants

Mr. A. V. Soman, Advocate h/f Mr. D. V. Soman, Counsel for
respondent No.1 – Union of India

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CORAM : R. G. AVACHAT, J.

DATED : 06th JULY, 2021

PER COURT :-

1. This is an application for withdrawal of the amount of compensation granted under the award passed by the Motor Accident Claims Tribunal (for short 'the tribunal'), Parbhani, on 29.07.2019 in M.A.C.P No.398 of 2012 and deposited in this Court pursuant to the order dated 19.09.2020, passed by this Court in Civil Application No.5817 of 2020.

2. The applicants are the Class-I heirs of the deceased Hanuman, who died in an accident involving motor vehicle and the train.

3. Shri A. V. Soman, learned Advocate for the respondent – South Central Railway, would submit that the tribunal did not have jurisdiction to entertain the claim. The learned Advocate would further submit that the tribunal has erred in fixing quantum, as well. He, therefore, opposed to grant the application.

4. Applicant No.1 is the widow and the applicant Nos.2 and 3 are the children of the deceased Hanuman, who died in the accident involving the motor vehicle (motorcycle) and the train. The accident took place on unmanned rail track.

5. In the case of ***Union of India v. Bhagwati Prasad (Dead) and others – 2002 ACJ 721***, it has been observed thus:-

“Rail accident – Accident at level crossing – Collision between a taxi and passenger train on a manned level crossing due to negligence of railway staff as the railway crossing was kept open for traffic at a time when the train was to pass through resulting in death of some passengers in taxi and others sustaining injuries – Claimants filed claims against insurance company of taxi and railway administration before the Claims Tribunal – Tribunal held that accident was due to sole negligence of railway staff – Whether the Tribunal would not be denuded of its jurisdiction which it had initially to entertain the claim applications and can award compensation against the Railways – Held: yes.

Once the jurisdiction is invoked and is exercised the said jurisdiction cannot be divested of on any subsequent

finding about the negligence of the tortfeasor concerned. It would be immaterial if the finding is arrived at that it is only the other joint tortfeasor who was negligent in causing accident and not the driver of the motor vehicle. In our considered opinion the jurisdiction of the Tribunal to entertain application for claim of compensation in respect of an accident arising out of the use of motor vehicle depends essentially on the fact whether there had been any use of motor vehicle and once that is established the Tribunal's jurisdiction cannot be held to be ousted on a finding being arrived at a later point of time that it is the negligence of the other joint tortfeasor and not the negligence of the motor vehicle in question."

6. I have perused the impugned award to find that it would be just and proper to permit the applicants to withdraw 75% of the amount of compensation deposited in this Court. Hence, following order:-

ORDER

- (i) The application is allowed.
- (ii) The applicants are permitted to withdraw 75% of the deposited amount, on furnishing an undertaking to the satisfaction of the Registrar (Judicial) of this Court.
- (iii) The amount be paid to the applicants, equally. The applicant Nos. 2 and 3 are minor. Therefore, the amount of the share of applicant Nos. 2 and 3 be kept

in fixed deposit in any nationalised bank, until they attain the age of majority.

- (iv) Balance 25% amount be invested in fixed deposit in any nationalised bank, till disposal of the appeal.

[R. G. AVACHAT, J.]

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