

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

925 CIVIL APPLICATION NO.5631 OF 2021
IN FIRST APPEAL NO. 1644/2013

**BHARTI DAGADU NARWADE AND OTHERS
VERSUS
SHABBIRBHAI BABABHAI PATHAN AND OTHERS**

...
Advocate for Applicants : Mr Bhide Vinod Y.
AGP for Respondent No.3: Mr. S. G. Chapalgaonkar

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 29th June, 2021.

ORDER:

1. It is an application moved by the applicants/original claimants for withdrawal of the amount pertaining to applicant Nos. 2 and 3 who could not withdraw their respective shares as they were minors with further permission to withdraw additional amount as detailed in para-7 as well as prayer clauses Para-10.
2. Heard Mr. Bhide, learned Advocate for the applicants and Mr. Chapalgaonkar, learned Advocate appearing for the Insurance Company. Perused the earlier order passed by this Court dated 27.07.2013 as well as the impugned judgment and award passed by the learned Motor Accident Claims Tribunal, Sangamner in MACP No. 86/2006.
3. Mr. Chapalgaonkar, learned Advocate for respondent No.2 Insurance company has described, in what way and in what manner the accident was occurred and how much shall be the liability of the Dumper involved in the accident. At this juncture, it would not be appropriate to deal with meritorious contentions. That exercise will be done at the time

of final hearing of the appeal. Mr. Chapalgaonkar shows his readiness and willingness to argue the appeals finally in view of its old nature which I appreciate. Equally, Mr. Bhide, the learned Advocate for the applicants/claimants agreed for final hearing of the appeals in death claim.

4. The question is about the prayer for withdrawal of the amount as stated herein above.

5. It is revealed during the course of argument that applicant Nos. 2 and 3, though allowed to withdraw 50% amount of their respective shares out of the amount deposited by the Insurance Company, as they were minor, not initiated any steps to that effect. Now applicant Nos. 2 and 3 have become major and hence, they need to be permitted to withdraw 50% amount of their 20% shares respectively as as per the order passed by this Court dated 27.06.2013. As such, the said prayer needs to be allowed.

6. Now coming towards another prayer made by the applicants regarding additional withdrawal of amount in view of education expenses of applicant Nos. 2 and 3. Applicant No.1 happens to be mother of Applicant Nos. 2 and 3, whereas, applicant No.4 seems to be the mother of the deceased. It is noticed by me that applicant Nos. 2 and 3 are now studying. They have to bear educational expenses and their needs are increasing. So, prayer for withdrawal of additional amount out of their respective shares needs to be considered.

7. Having regard to the genuine need of applicant Nos. 2 and 3 to

satisfy their educational expenses, I am of the view that, if they are allowed to withdraw additional 10% amount of their respective 20% shares out of the amount deposited by the Insurance company, this would meet the ends of justice.

8. Applicant No.4 is also old aged and considering the Covid-19 pandemic, I am also convinced to grant withdrawal of additional 10% of her 20% share in the entire decretal amount deposited by the Insurance company.

9. Applicant No.1 seems to have received substantial amount and as such I am not convinced to grant any withdrawal as prayed by her.

10. Having regard to the above reasons and discussion, the application is allowed in following terms:

ORDER

- i. Applicant Nos. 2 and 3 are hereby permitted to withdraw their 50% of their respective 20% shares as per the earlier order passed by this court dated 27.06.2013 and in addition, they are further permitted to withdraw 10% of their respective shares out of the amount deposited by the insurance company in this Court, on usual undertaking as per the satisfaction of the Registrar Judicial of this Court.
- ii. Applicant No.4 who is old aged is allowed to withdraw additional 10% of her 20% share out of the amount deposited by the Insurance company, on usual undertaking as per the satisfaction of the

Registrar Judicial of this Court.

- iii. In view of the above terms, civil application stands disposed of.
- 11. By looking to the old nature of the appeals and in view of the submissions made by Mr. Bhide, learned Advocate for the original claimants and Mr. Chaplgaonkar, learned counsel appearing for the Insurance Company, place both the appeals i.e. First Appeal No.1644/2013 and First Appeal No. 1207/2013 for final hearing at the admission stage.
- 12. Office to make available record and proceeding to the learned Advocates so as to go through the same.

(SHRIKANT D. KULKARNI, J.)

JPC