

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

**25 CIVIL APPLICATION NO.11642 OF 2021
IN FA/2408/2020**

**VIDYA UMAKANT SHIVSHETTI AND ORS
VERSUS
VITTHAL SIDDHARAM KHARAT AND ANR**

Mr S.S. Wakure, Advocate for applicants
Mr V.N. Upadhye, Advocate for respondent no.2

CORAM : SHRIKANT D. KULKARNI, J..

DATE : 25th October, 2021

PER COURT :

1. It is an application for withdrawal of amount moved by the applicants/original claimants.
2. Heard Mr S.S. Wakure, learned Counsel for the applicants and Mr V.N. Upadhye, learned Counsel for respondent no.2. None appears for respondent no.1.
3. Perused the impugned judgment and award dated 5.2.2020 passed in M.A.C.P. No.365/2016 by the Member, M.A.C.T., Osmanabad.
4. Mr Upadhye, learned Counsel for respondent no.2 strongly opposed to allow the applicants to withdraw the amount. He submits that the vehicle in question is implanted in this claim. There are arguable points in the appeal. The deceased was one of the occupants of the car, which met with an accident. The F.I.R. was against unknown vehicle. Under these circumstances, it would not be appropriate to allow the applicants to withdraw the amount.

5. On the other hand, Mr Wakure, learned Counsel for the applicants submits that the Tribunal has considered all these aspects and awarded compensation on merits. It is a death claim. The applicants are in need of money.

6. On perusal of the impugned judgment and award passed by the M.A.C.T., Osmanabad, it is revealed that it is a death claim. The Tribunal was pleased to partly allow the claim and directed the respondents to pay compensation of Rs.22,30,000/- jointly and severally with interest @ 7% p.a. and the abovesaid compensation would be inclusive of amount of N.F.L. The impugned judgment and award passed by the M.A.C.T., Osmanabad has been challenged on various ground.

7. The learned Counsel for the Insurance Company has raised certain arguable points regarding implanting of vehicle and F.I.R. against unknown vehicle. That would be considered at the time of final hearing of the appeal. It would be appropriate to allow the applicants to withdraw the amount by looking to the fact that their family member met with the death in a motor vehicle accident.

8. Having regard to the submissions of both the sides and after perusing the impugned judgment and award passed by the M.A.C.T., Osmanabad, I am convinced to grant withdrawal of 50% of the amount of compensation deposited by the Insurance Company in this Court. With this, I conclude and proceed to pass the following order :

ORDER

(i) Civil Application is hereby allowed as under:

(ii) The applicants are permitted to withdraw 50% of the amount of compensation deposited by the Insurance Company/respondent no.2 in this Court, on furnishing usual undertaking with the Registrar (Judicial) of this Court. The payment shall be made to the applicants as per the apportionment made by the Tribunal.

(iii) Remaining 50% of the amount of compensation deposited by the Insurance Company shall be invested in the Fixed Deposit in any Nationalised Bank for a period of one year.

(iv) Civil Application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

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