

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

921 CIVIL APPLICATION NO.1672 OF 2020
IN
FA/582/2020

VAISHALI VIKRAM JADHAV AND ORS
VERSUS
M.S.R.T.C., THR DIV. CONTROLLER, PARBHANI

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Mr. M.S.Shaikh h/f Mr. Sachin S.Deshmukh,
Advocate for applicants.

Mr. A.D.Wange, Advocate for Respondent.

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CORAM : V.L.ACHLIYA, J.
DATE : 20/01/2021

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ORAL ORDER :

1. The applicants/claimants have moved this application seeking withdrawal of amount deposited by the appellant/MSRTC.
2. Heard learned counsel for applicants and learned counsel representing the Appellant/MSRTC.
3. In brief, it is the contention of learned counsel for appellant that appellant has good case to succeed in Appeal. The evidence on record make out a case of contributory negligence on the part of deceased. It is submitted that accident was occurred due to sheer negligence on the part of deceased who was driving motorcycle and hit the bus from its driver side. While

assessing the evidence, the Tribunal has not considered the contributory negligence on the part of deceased and proportionately deducted the amount. It is further submitted that amount of Rs. 2,50,000/- has been awarded towards loss of love and affection. By referring the Constitutional Bench decision in the case of ***National Insurance Co. Ltd. V/s Pranay Sethi and others reported in (2017) 16 Supreme Court Case – 680***, learned counsel submits that award of compensation of Rs. 2,50,000/- towards love and affection is contrary to law laid down by the Constitution Bench in said case. If the applicants are permitted to withdraw the amount, there is every likelihood that the purpose of filing of Appeal may be frustrated.

4. On the other hand, learned counsel for claimants submits that the Appeal filed is devoid of merit. The trial Court has passed the order after due analysis of the evidence adduced in the case. No evidence adduced on the part of appellant to establish the case of contributory negligence.

5. On due consideration of the submissions advanced in the light of challenge raised in Appeal, I am of the view the order in following terms would meet the ends of justice.

Hence, the following order.

ORDER

[i] The applicants/claimants are permitted to withdraw the amount to the extent of Rs. 6,00,000/- [Rupees Six Lakh].

[ii] Out of Rs. 6,00,000/- [Rupees Six Lakh], the amount of Rs. 3,00,000/- [Rupees Three Lakh] be paid to applicant No. 1 and amount of Rs. 1,50,000/- each be paid to applicant Nos. 4 and 5.

[iii] After making the payment of Rs. 6,00,000/- [Rupees Six Lakh] to applicant Nos. 1,4 and 5, the balance amount be invested in Fixed Deposit with any nationalized Bank initially for a period of two years with standing instructions to renew the same till further orders from this Court. The interest accrued over the amount invested in fixed deposit be paid to applicant No. 1 in regular interval of three months by way of transfer of amount in her savings bank account. The amount of interest so paid shall be utilized by applicant No. 1 for herself and for the maintenance of her minor children i.e. applicant Nos. 2 and 3 as well as dependent claimant Nos. 4 and 5.

[iv] The withdrawal of amount and payment of interest shall be subject to outcome of Appeal.

[v] The amount to be paid to applicant Nos. 1,4 and 5 shall be transferred in their respective savings

bank accounts as per the particulars to be furnished by them subject to furnishing written undertaking to the effect that in the event the Award is set aside or modified, the applicants shall re-deposit the amount within eight weeks from the date of such order.

6. The application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP