

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.734 OF 2021
IN
FIRST APPEAL NO.1143 OF 2008**

Asmita S. Khanvilkar & Ors.]...Applicants.

IN THE MATTER BETWEEN:

New India Assurance Co.Ltd.].. Appellant.

Vs.

Asmita S. Khanvilkar & Ors.]...Respondents

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None for the appellant in FA no.1143/2008 and for applicant in C.A.F. no.2965 of 2008 in FA No.1143/2008.

Mr.Uday Mehta i/b Mrs.Swati Uday Mehta for applicants in I.A.No.734/2021.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 17TH MARCH, 2021.

P. C. :

1. This praecipe is moved by the learned Counsel for the claimants/respondents seeking withdrawal of the entire amount of compensation.

2. Learned Counsel for the respondents, Mr. Mehta has tendered a copy of communication addressed to the appellant New India Assurance Company Limited dated 12th March 2021, which was duly acknowledged

by the appellant. It has been stated that the respondents are moving an application seeking withdrawal of amount of compensation deposited by the appellant.

3. The only respondent/claimant who survived, after impugned award came to be passed by M.A.C.T., Mumbai on 13th August 2007 are respondents Asmita S. Khanvilkar who is a senior citizen, aged about 63 years and her son Ninad aged about 32 years who was aged 3 years at the time of accident of his father.

4. Learned Chairman of M.A.C.T., Mumbai, by impugned judgment and award held both, the original respondents, jointly and severally liable to pay and deposit an amount of Rs.6,45,000/- excluding the amount under '*no fault liability*' with interest at the rate of 6% p.a.

5. The insurer preferred an appeal before this Court in the year 2008. By an order dated 26th June 2008, this Court [Coram:V.M. Kanade,J.] while granting stay to the execution of impugned award, directed the appellant/insurer to deposit an amount of compensation with interest within 8 weeks.

6. After depositing the amount, it appears that the appellant has not taken any step to prosecute the appeal which is pending for nearly 13 years. It is submitted by Mr.Mehta, the learned Counsel for the applicants that the claimant Asmita Sudhir Khanvilkar is now aged about 63 years, is a senior citizen and bed ridden. Substantial amount towards her medical expenses is required for rest of her life. Both the

claimants are undergoing great deal of hardship and are unable to spend amount for their day to day basic needs.

7. Having considered the overall circumstances, including the fact that the very object of the enactment will be frustrated if the claimants are deprived of the amount of compensation which was awarded way back in the month of August 2007, only for the reason that the appeal is pending in this Court. It is difficult to fathom as to why the appellant/insurer, despite due notice, has failed to appear before this Court which exhibits negligence on its part. It can be said that the appellant is not interested in prosecuting the appeal.

8. For the reasons aforesaid, at this stage, claimant nos.1 and 2, are permitted to withdraw the entire amount of compensation with accrued interest, with an Undertaking at the time of withdrawal, that in case the appeal succeeds, they shall refund the amount with interest, subject to outcome of the appeal.

9. The application stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]