

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

**CIVIL APPLICATION NO. 2904 OF 2018
IN
FIRST APPEAL NO. 1237 OF 2019**

Shyla Parambaloth Joseph and anr. Applicants

In the matter between :-

The New India Assurance Company
Limited

.... Appellant

v/s.

Shyla Parambaloth Joseph and anr.

.... Respondents

Mrs. Rina Kundu for the Applicants.

Ms. Deepika Prabhale i/b. Res Juris for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 02nd JULY, 2021.

P. C. :-

. The Applicants have filed this Civil Application for withdrawal of compensation deposited by the Appellant – Insurance Company pursuant to the judgment and award dated 30/03/2016 passed by the Member, MACT, Kalyan in MACP No.144/2007. By the impugned judgment, the Claims Tribunal has computed compensation at Rs.21,68,624/- and after deducting 60% towards contributory negligence of the deceased, the Tribunal has awarded compensation of Rs.8,67,450/- to the Applicants-Claimants.

2. Ms. Deepika Prabhale, learned counsel for the Appellant – Insurance Company vehemently opposes to the payment of the compensation to the Applicants on the ground that the accident was caused solely due to rash and negligent driving by the deceased himself. She submits that the FIR was also lodged against the deceased for driving the motorcycle in rash and negligent manner.

3. The Applicants-Claimants are the parents of the deceased who expired in a motor vehicular accident on 09/07/2005. The Tribunal has recorded a finding that a vehicle bearing truck no.MH-18/M-2491 had turned turtle on the road as a result the road was blocked. It is in evidence that the motorcycle of the deceased dashed against the said truck which had turned turtle on the road. The only negligence attributed to the deceased is that one of the police man on the patrolling duty had flashed torch light as to signal to the deceased about obstruction on the road. The Tribunal has recorded a finding that mere flashing torch light was not sufficient to alert the deceased. The Tribunal has also noted that the driver of the truck had not put any signal or obstruction on the road to indicate that the truck had turned turtle on the road. Despite these observations, the Tribunal has deducted 60% towards contributory negligence of the deceased.

4. *Prima facie*, the deduction of 60% appears to be on unreasonable. Considering this aspect and considering the reasons stated by the Applicants in the Application for withdrawal, 50% of the compensation deposited by the Appellant – Insurance Company along with proportionate interest is ordered to be paid to the Applicants in equal proportion. Suffice it to say that that the withdrawal shall be subject to the final outcome of the Appeal. The Applicants shall give an undertaking before the Tribunal that they shall abide by the order that may be passed in the Appeal.

5. Civil Application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)