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

INTERIM APPLICATION NO.1067/2021
IN
FIRST APPEAL NO.19/2018

Smt. Sunita Kiran Gaikwad & Ors. ..... Applicants

Vs.

The New India Assurance Co. Ltd. & Anr...... Respondents

Mr. Pritesh K. Bohade for the Applicants
Mr. D. S. Joshi for the Respondents

CORAM: K.K.TATED &
N.R.BORKAR, JJ.

DATED : APRIL 27, 2021
(VIDEO CONFERENCING)

P.C.

1 Heard. By this Application, the Applicants / claimants are seeking permission to withdraw the amount deposited by the Appellant New India Assurance Co. Ltd. as per the judgment and award dated 08.08.2018 passed by the MACT, Nasik in MACP No.948/2012.

2 In the present proceedings, in an accident which occurred on 23.04.2012 the Applicant No.1 has lost her husband Kiran Raghunath Gaikwad. On the date of accident he was 38 years old and was earning Rs.10,50,000/- p.a. by doing the business of sale of pesticides and by way of agricultural income. Therefore, the Applicants made an Application for compensation of Rs.4 crores with interest @

18% p.a. under Section 166 of the Motor Vehicles Act.

3 After considering the evidence on record the MACT, Nashik has held that the Applicants are entitled to the compensation to the tune of Rs.1,02,81,250/- (Rs. One Crore Two Lacs Eighty One Thousand Two Hundred Fifty Only) with interest @ 8% p.a. At the time of awarding the compensation, the Tribunal has considered the income of the deceased and the Income Tax Returns on record. Para 17 and 20 of the award read thus:

> *"17. The Petitioners have submitted that at the time of the accident, the deceased was running a shop of pesticides and was also doing agricultural work and was earning about Rs.25,00,000/- per annum. In support of the income of the deceased, the Petitioners examined Income Tax Inspector at Exh.50 and also produced income tax returns of the deceased at Exh.52 to 55.*
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> *20. Perusal of the income tax return filed by the Petitioners at Exh.52 to 55 shows that although in the assessment year 2010-11 and 2011-12, there is increase in the income to the extent of Rs.82,057/- and Rs.47,286/-. The increase of the income as per the income tax return filed after the death of the deceased is Rs.5,31,180/-. The said increase is more than the income of the deceased in the previous year. Considering the said fact, I find substance in the contention raised by the Ld.Advocate appearing for the opponent No.2 that the income has been exaggerated. Accordingly, I am inclined to consider income for the assessment year 2012-13 by adding average annual increase of Rs.70,000/- and by adding the same in the income of Assessment year 2011-12. Hence, the income of 2012-13 would be Rs.5,19,022/- plus Rs.70,000/- i.e. about Rs.5,90,000/-. Accordingly, for calculating the compensation amount the annual income would be considered as Rs.5,90,000/-."*

4 The learned counsel for the Applicants submit that on the date of filing the Application before the MACT, Applicant No.2 and 3 were minor and were taking education. He submits that it is very difficult for the Applicant No.1 to maintain Applicant Nos.2 and 3 as well as her in-laws i.e. Applicant Nos.4 and 5. The learned counsel for Applicants submit that though the Applicant No.1 lost her husband on 24.04.2012 and the MACT had passed Award on 08.08.2017 till today, she has not received a single paisa by way of compensation except No Fault Liability. Hence, she has filed the present Application. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the Applicants to withdraw the amount deposited by the appellant Insurance Co.

5 The learned counsel for the Applicants submits that in any case, in the present proceedings, the Appellant has challenged the judgment and award passed by the Tribunal to the extent of Rs.42,79,912/- only. He submits that these facts are clear from Foot Note-II of the appeal memo.

6 On the other hand, the learned counsel for the Appellant submits that in the present proceedings, they are challenging the quantum of the compensation awarded by the Tribunal to the extent of Rs.42,79,912/-. He submits that in any case, Applicant No.3 Aryan Kiran Gaikwad is a minor, therefore, there is no question of permitting her to withdraw any amount. He submits that even Applicant No.2 Arjun Kiran Gaikwad is taking education and is of only 19

years. Hence, this Hon'ble Court be pleased to pass appropriate orders.

7 Heard both sides. It is to be noted that in the present proceedings, though the MACT, Nashik had passed judgment and award on 08.08.2017, till today, the Applicants claimants have not received any compensation except No Fault Liability. Considering these facts and as the Applicant No.1 has to look-after Applicant Nos.2 to 5 and also their day to day needs as well as the education of Applicant Nos.2 and 3 and as the Appellant has preferred the appeal challenging the quantum to the extent of Rs.42,79,912/- only, we are of the opinion that the Applicant has made out a case for allowing them to withdraw some amount during pendency of the First Appeal.

8 Hence, the following order is passed:

a. The Applicants are permitted to withdraw the following amount with accrued interest without furnishing any security.

i. Applicant No.1 Sunita Kiran Gaikwad - Rs.15,00,000/-

ii. Applicant No.2 Arjun Kiran Gaikwad - Rs.5,00,000/-

iii. Applicant No.4 Raghunath Mahadu Gaikwad - Rs. 5,00,000/-

iv. Applicant No.5 Nirmala Raghunath Gaikwad - Rs.5,00,000/-

b. The MACT is directed to invest the remaining amount in a fixed deposit account of any Nationalized Bank, initially, for a period of one year which shall be continued till further orders.

c. The Interim Application stands disposed of accordingly.

d. No order as to costs.

(N.R.BORKAR, J.) **(K.K.TATED, J.)**