

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

**CIVIL APPLICATION NO. 713 OF 2018
AND
CIVIL APPLICATION NO. 3814 OF 2019
IN
FIRST APPEAL (ST) NO. 1515 OF 2018**

Divisional Manager,
The New India Insurance Co.

...Appellants

vs.

Smt.Savita Prabhakar Kamble & Ors.

...Respondents

Mr.Milind V. More for Appellant.

Mr.Jayant J. Bardeskar for Respondent Nos.1 to 3.

CORAM : BHARATI DANGRE, J.

DATED : 12 OCTOBER 2021

P.C. :

CIVIL APPLICATION NO. 713 OF 2018

. Heard learned Counsel for the Applicant and the Respondents, who appear pursuant to the notice issued on 20 February 2018. Perused the application, which seeks condonation of delay of 86 days in filing the first appeal. The reasons for the delay are sought to be explained in paras 4 and 5 of the application. The foremost reason being the Insurance company had to follow the procedure for getting approval from the higher authorities before instituting the appeal.

Perused the reason cited. It appear to be proceeded in nature and is bonafide. In view of this, the delay occurred in filing the appeal deserve to

be condoned.

Civil Application No.713/2018 is made absolute in terms of prayer clause (a).

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2. **Admit.**

3. Learned Counsel waives notice on behalf of Respondent Nos.1 to 3.

CIVIL APPLICATION NO. 3814 OF 2019

4. By the present application, the Applicants are seeking withdrawal of the amount, which is deposited by the Appellant in terms of the earlier order of this court on 7 February 2018 and which is invested in Fixed Deposit in State Bank of India. The noting of the Registry record that amount of Rs.63,21,531/- is deposited and is invested in a Fixed Deposit in the year 2018 itself.

5. Heard learned Counsel for the Applicants and the Respondent. The claim amount is on account of the death of one Prabhakar Dhondiram Kamble on 24 March 2006, who is the husband of Applicant No.1 and father of Applicant No.2, who succumbed to the injuries sustained by him in the accident. The jeep, which was responsible for the accident, was insured with the insurance company, which is the Appellant before this court. The Tribunal has rendered a finding that the said jeep is responsible for the death of Prabhakar and on appreciation of the evidence brought before it, allowed the claim and directed Opponent Nos.1 to 3 to jointly

and severally deposit an amount of Rs.39,35,274/- in the Tribunal along with interest at the rate of 7% per annum from the date of petition till its actual realisation.

It is this judgment, which is the subject matter of the first appeal.

6. On hearing Counsel for the Applicants and on perusal of the application, which seeks withdrawal of the amount, I am satisfied that the money, which has been awarded by way of a claim of their deceased husband and father, respectively, is meant for them and as such, they shall be permitted to withdraw the said amount particularly, in light of the financial distress, which has been cited as a reason for its withdrawal. At the time when the claim was granted, Applicant No.3 was minor, whereas Applicant No.2 was pursuing his education. This necessarily give rise to inference that Applicant No.1 must have spent money for their education and when a prayer is made to permit them to withdraw the amount, which is deposited in court, I deem it expedient to grant withdrawal of 50% of the amount deposited.

However, since the amount is already deposited in a Fixed Deposit, the Fixed Deposit will be permitted to be encashed and 50% of the amount of the Fixed Deposit along with interest which has culminated till 30 September 2021 will be permitted to be withdrawn which shall be shared, in terms of the order of the Tribunal, in equal proportion by Applicant Nos.1, 2 and 3. However, as far as remaining amount of 50% is concerned, that shall be again reinvested in the Fixed Deposit in the State Bank of India, where the earlier amount was deposited. The withdrawal is permitted subject to an undertaking by the Applicants that they shall refund the amount if the appeal is allowed and the refund shall be with the rate of interest, which would be determined by the court at the time of

disposal of the appeal.

7. The private paper book is permitted to be filed so that the appeal itself can be taken up for final hearing. On the preparation of the paper book, the parties are at liberty to move this court for final hearing of the appeal.

(SMT. BHARATI DANGRE, J.)