

Santosh

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

**INTERIM APPLICATION NO. 4182 OF 2021
IN
FIRST APPEAL (ST) NO. 18315 OF 2021**

Bismilla Salim Mulla & ors.	...Applicants
In the matter between	
The General Manager	...Appellant
Versus	
Bismilla Salim Mulla & ors.	...Respondents

**SANTOSH
SUBHASH
KULKARNI**

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Mr. Abhijit Kulkarni, for the Appellant/Respondent in IA.
Mr. Sandeep Koregave, for the Respondent/Applicant in IA.

**CORAM: N. J. JAMADAR, J.
DATED : 20th DECEMBER, 2021**

PC:-

1. Heard the learned Counsel for the applicant and the learned Counsel for the appellant – insurer.
2. The learned Counsel for the respondent resisted the prayer for withdrawal on the ground that the claim of the applicant was not at all sustainable as there was material on record to indicate that the deceased had suffered a domestic fall. Attention of the Court was invited to the clause E of the grounds of appeal wherein it is asserted that in the discharge summary of Hiremath Hospital it was mentioned that, “the patient came with alleged history of domestic fall.”

3. The learned Counsel for the appellant further submits that this aspect has not been adverted to at all by the learned Commissioner for Employees' Compensation.

4. The aforesaid ground, which is specifically raised by the appellant, warrants consideration. However, the fact that the applicants - claimants are the wife and children of the deceased and they require the amount to meet the necessities of life, can hardly be contested. In the circumstances, it would be expedient to allow the applicants to withdraw 30% of the amount of compensation along with interest accrued thereon subject to furnishing the usual undertaking.

5. Hence, the following order:

: O r d e r :

- (i) The application stands allowed.
- (ii) The applicants - claimants are permitted to withdraw 30% of the amount of compensation along with interest accrued thereon in terms of the impugned judgment and award in Application (E.C.) No.39/C-11/2017, dated 26th March, 2021, passed by the learned Commissioner, Employees' Compensation, Kolhapur, subject to furnishing an undertaking, before the Commissioner, to bring back the said

amount along with interest at such rate as may be decided by this Court, in the event the appeal is allowed and it is held that the applicants are not entitled to compensation.

- (iii) Rest of the amount be invested in a fix deposit with a Nationalized Bank.

The application stands disposed of.

[N. J. JAMADAR, J.]