

Uday S. Jagtap

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

**INTERIM APPLICATION NO. 1602 OF 2019
IN
FIRST APPEAL (ST.) NO. 18401 OF 2017**

Smt. Sunita Vijendra Shinde & Ors. .. Applicants
In the matter between
Divisional Manager,
The New India Assurance Co. Ltd., Nashik .. Appellant
Vs.
Smt. Sunita Vijendra Shinde & Ors. .. Respondents

.....
Mr. Pritesh K. Bohade for the applicants
Mr. H.G. Misar for the appellant – insurer

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 16th FEBRUARY, 2021

P.C.

1. This is an application for withdrawal of the amount of award granted by M.A.C.T., Nashik in M.A.C.P. No. 1034 of 2011 to the legal representatives of the deceased.
2. It is the contention of the applicants that the deceased was the sole earning member of the family. There is no independent source of income for their survival and, therefore, they are in badly need of some amount.
3. Mr. Misar, learned Counsel for the appellant – insurer objects withdrawal of the amount by contending that he has good case on merits as the driver of the offending vehicle, which carries hazardous substance, did not possess the driving license at the time of accident.

4. Having considered the respective submissions at bar, the applicants are permitted to withdraw 50% of the amount of compensation with accrued interest. The applicants shall furnish an undertaking within four weeks that if the appellant - insurer succeeds in appeal, the applicants shall return the amount with interest at such rate as would be directed by this Court, depending upon the outcome of the first appeal.

5. If the applicants do not file an undertaking within the aforesaid period, the amount deposited by the appellant - insurer shall be invested by the M.A.C.T in a fixed deposit in any Nationalized Bank for a period of one year and thereafter for one more year again after obtaining order from this Court.

6. If 50% amount is withdrawn by the applicants, balance amount shall be invested by the M.A.C.T in a fixed deposit as stated above, in a Nationalized Bank.

7. The application stands disposed of.

(PRITHVIRAJ K. CHAVAN, J.)