

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

937 CIVIL APPLICATION NO.5560 OF 2022
IN FA/2167/2021

GANGA RAMESHWAR KOLTE AND ORS

VERSUS

THE DIV. CONTROLLER, M.S.R.T.C., AURANGABAD

Advocate for Applicants : Mr S.G. Joshi
Advocate for Respondent/sole : Mr A.D. Wange

CORAM : SHRIKANT D. KULKARNI, J.
DATE : 22nd APRIL, 2022

PER COURT :

1. It is an application for withdrawal of compensation amount moved by the applicants/claimants.
2. Heard Mr S.G. Joshi, learned counsel for the applicants and Mr A.D. Wange, learned counsel for appellant/MSRTC.
3. Perused the impugned Judgment and award passed in MACP No. 342/2018 by the MACT, Aurangabad.
4. It is revealed during the course of argument that the deceased was riding motorcycle when met with an accident. It was accident between the motorcycle and the bus belonging to the MSRTC. According to Mr Wange, learned counsel for the appellant/MSRTC, though defence of contributory negligence was put forth by the MSRTC before the Tribunal, the same was not considered.

5. The driver of the MSRTC was held responsible simply on the basis of FIR lodged against him. Mr Wange, learned counsel submitted that the Tribunal has awarded exorbitant compensation. He, therefore, urged to reject the application.

6. On the other hand, Mr Joshi, learned counsel for the applicant submitted that the applicant No.1 is a widow of the deceased and applicant Nos. 2 and 3 are the minor children of the deceased and applicant Nos. 4 and 5 are the parents. They have lost earning member of the family.

7. The applicants/claimants are in need of money. Therefore, he urged to allow the applicants to withdraw the entire amount of compensation. He submitted that the defence raised by the MSRTC has been considered by the Tribunal and it has been turned down.

8. I have considered the submissions of both the sides. It is a death claim and the Tribunal seems to have awarded compensation assessed at Rs.22,12,000/- with interest @ 9% per annum from the date of claim till its realization. The defence of contributory negligence raised by the MSRTC seems to have not properly considered as per the submissions of Mr Wange, learned counsel for the appellant/MSRTC coupled with other issues. That aspect would be considered at the time of final argument.

9. Having regard to the facts of the case, I am convinced to allow the claimants to withdraw 50% of the amount of compensation as under :-

ORDER

(i) The application is hereby allowed.

- (ii) The applicants/claimants are hereby permitted to withdraw 50% of the amount of compensation with accrued interest thereon by furnishing usual undertaking to the Registrar (Judicial) of this Court.
- (iii) Remaining 50% of the amount of compensation be invested in Fixed Deposit Account in any nationalized bank for a period of one year initially with renewal clause.
- (iv) The civil application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

mta