

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

973 CIVIL APPLICATION NO.9449 OF 2022 IN
FIRST APPEAL NO.584 OF 2022

YASMIN SALIM KHAN (DIED) THROUGH LRS. SALIM
RASHID KHAN AND OTHERS
VERSUS

THE BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.,

...

Mr.R.S. Kasar, advocate for applicants.

Mr.S.G. Chapalgaonkar, advocate for respondent
no.1.

...

CORAM : S.G. DIGE, J.

DATE : 29th JUNE, 2022

PER COURT :-

1. Heard learned counsel for the applicants and respondent no.1.

2. The learned counsel for the applicants submits that as per the judgment and award passed by the learned Member, Motor Accident Claims Tribunal in Motor Accident Claims Petition No.533/2017, the respondent no.1 has deposited the entire compensation amount of Rs.10,51,560/- before this Court. The applicants are the heirs and legal representatives of the deceased. Applicant no.1 has lost his wife. Applicant no.1 is facing paucity of funds for maintaining himself as well as applicant nos.2 and 3. The applicants are facing paucity of funds as they have spent huge amount ON the medical treatment of deceased Yasmin by borrowing the amount from his relatives. They need the amount for their day

to day expenses. The applicants have to meet out their family needs. The applicants are in need of money for medical treatment also. There is no another earning member in the family of applicants, therefore, they requires substantial amount for day to day necessities, hence requested to permit the applicants to withdraw the deposited amount by respondent no.1.

3. The learned counsel for respondent no.1 submits that initially the claim was filed by deceased Yasmin for injury suffered to her. The claim was filed in the year 2017 and Yasmin died in the year 2020. The learned trial Court has awarded the compensation to the applicants considering the death of Yasmin. The learned trial Court has wrongly concluded that death of Yasmin was occurred due to said accident, when it was happened after three years of the accident. Hence the conclusion of the trial Court is wrong and against the principles of law, which is impugned by respondent no.1 in the appeal. If the applicants are allowed to withdraw the amount and appellant succeeds in the appeal, it may not be possible for respondent no.1 to recover the amount from the applicants. The learned counsel further submits that the injury claim was filed on the basis of 75% disability. If the injury claim is considered for granting compensation then also the applicants cannot be entitled to

withdraw the compensation amount for injuries suffered to Yasmin. At the most, the applicants are entitled for loss of estate. Hence requested to dismiss the application.

4. Respondent no.1 has impugned the judgment and award passed by the learned Motor Accident Claims Tribunal. The applicants are the heirs and legal representative of the deceased. They are facing financial crises. The applicant no.1 has spent huge amount on the medical expenses of deceased Yasmin. Issue raised by the learned counsel for respondent no.1 can be considered at the time of deciding the appeal. Hence I pass the following order :-

ORDER

(i) The civil application is allowed.

(ii) The applicants are permitted to withdraw 25% amount on giving usual undertaking before the learned Registrar (Judicial).

(iii) The applicants are permitted to withdraw further 25% amount after furnishing the solvent surety.

(iv) The civil application is disposed of.

(S.G.DIGE, J.)