

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

**917 CIVIL APPLICATION NO.13339 OF 2021
IN FA/1289/2005**

**LATE SHANTABAI MOTIRAM KAKADE THR SUNANDA MOTIRAM
KAKADE AND ANOTHER
VERSUS
DIVISIONAL CONTROLLER, M S R T C DIV. JALGAON**

...
Advocate for Applicants : Mr.Bhokarikar Madhav M.
Advocate for Respondent : Mr.Manoj Shinde & Mr. M.K. Goyanka
...

**CORAM : VINAY JOSHI, J.
DATE : 15th FEBRUARY 2022.**

PER COURT :

1. This is an application seeking withdrawal of compensation amount deposited by the respondent/appellant in pursuance of the judgment and award passed in M.A.C.P. No. 321 of 2001.

2. The appellant's learned counsel would submit that an accident occurred in the year 2000. The claim petition filed under Section 166 of the Motor Vehicles Act was decided in 2005. However till date the applicants are deprived from compensation amount.

3. Learned counsel appearing for respondent has objected for withdrawal of the amount on the premise that an accident was an outcome of the sole negligence on the part of the deceased himself. He has pointed out that FIR lodged by the Police Constable blames

negligence only of the deceased. It reveals that as per the Claimants case, while the deceased was proceeding by Scooter, one S.T. bus was proceeding ahead in the same direction. According to the claimants the bus driver without giving any signal or indicator has abruptly stopped the S.T. bus on the road, due to which the deceased dashed to the said bus from behind. The Tribunal has assessed compensation to the tune of Rs. 1,84,000/- along with interest @ 9% p.a.

4. Un-disputedly there was a dash of deceased's Scooter with S.T. Bus owned by the respondent. Thus, the involvement of the S.T. Bus in accident is not disputed. There may be arguable case of negligence, but it can be a case of contributory negligence. Having regard to the fact that till date the claimants are away from compensation therefore, it is necessary to allow them to withdraw partial amount.

5. In view of that the applicant Nos. 2 and 3 are permitted to withdraw 50% of the deposited amount in equal proportion.

6. Application stands disposed of.

7. It is submitted that, respondent Nos. 2 and 3 are the only legal heirs of deceased respondent No. 1 Shantabai, which are already on record. The appellant is permitted to make necessary

amendment to bring legal representatives of respondent No. 1 Shantabai on record.

8. Amendment be carried out forthwith.

(VINAY JOSHI, J.)

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