

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 839 OF 2022

IN

FIRST APPEAL (ST) NO. 34359 OF 2018

Smt. Poonam Gupta

...Applicant (App
is Ori.Resp. No.1)

Versus

Divisional Manager & Ors.

...Respondents

In the matter between

Divisional Manager

...Appellant

Versus

Smt. Poonam Gupta & Ors.

...Respondents

Mr. Yogesh Pande for the Applicant/Respondent No. 1 in IA/839/22.

Mr. R. Kanojia i/by Res Juris for the Appellant.

CORAM : R.I. CHAGLA J

DATE : 13 December 2022

ORDER :

1. The Applicant/original Respondent No. 1 has sought permission to withdraw her share of the award amount along with

the interest receivable without furnishing any security for the same.

2. By an order dated 28th March 2019 this Court stayed the execution, implementation and operation of impugned judgment and award dated 19th April 2018 passed by the Member of Motor Accident Claims Tribunal, Pune in MACP No.129 of 2015.

3. This was subject to the Appellant/Insurance Company depositing the entire awarded amount with interest within the stipulated time. The Appellant/Insurance Company has thereafter deposited the entire awarded amount with interest within the stipulated time. By this very same order dated 28th March 2019, the Applicant herein, who was wife of the deceased was permitted to withdraw 20% amount without furnishing any security. The Claimant-Shree Prasad Shah, who is the father of the deceased, was entitled to 5% amount without furnishing any security and the Claimant-Saroj Gupta, mother of the deceased was entitled to withdraw 5% amount without furnishing any security.

4. The Applicant has stated that she is the ultimate and unfortunate sufferer due to the accident. She has lost her bread

earner husband in the accident. He was engaged in business activities with annual earning of over Rs. 15/- Lakhs. His tragic death has caused severe financial loss to the Applicant. The Applicant is in extreme need of money for her survival and maintenance and hence, this Application is made for allowing her to withdraw additional amount deposited by the Appellant/Insurer Company.

5. Learned Advocate appearing for the Applicant has referred to the operative part of the impugned judgment and award of Additional Member of Motor Accident Claims Tribunal, Pune who has allowed the amount to be distributed amongst the Applicant and Opponent Nos. 3 and 4 (father and mother of the deceased) to the extent of 60% and 40% respectively. He has accordingly, submitted that there is no objection to the Application for withdrawal of the additional amount provided it is proportionate to her share as provided in the operative part of the impugned judged and order.

6. Learned Advocate appearing for the Appellant/Insurance Company has submitted that the issue is as to quantum of the compensation awarded by the Motor Accident Claims Tribunal, Pune. He has submitted that the Application which had been filed by the

Applicant herein and in which Opponent Nos. 3 and 4 who are the father and mother of the deceased are joined as Respondents.

7. I have considered the averments. In my view, considering the hardship made out by the Applicant in the Interim Application as well as her extreme need of money for her survival and maintenance as well as considering the order which had been passed by this Court on 28th March 2019 allowing the Applicant to withdraw 20% amount without furnishing any security had been passed nearly 3 1/2 years back, the Application is partly required to be allowed with safeguards. Hence, the following order is passed.:-

(i) The Applicant is permitted to withdraw additional 30% of the amount deposited by the Appellant/Insurance Company, subject to furnishing an undertaking within two weeks that if the Appellant succeeds in the Appeal, the Applicant herein shall return the amount with interest at such rate as this Court determines.

(ii) If the total amount of 50% of the amount deposited is

withdrawn by the Applicant which includes the earlier 20% withdrawn by the Applicant, balance amount shall be invested by the Motor Accident Claims Tribunal in fixed deposit with a nationalised bank as had been directed by the previous order dated 28th March 2019.

(iii) This order is passed in accordance with the liberty which has been granted to the Applicant herein to prefer appropriate application for withdrawal of the remaining amount, which shall be determined on merit.

(iv) Interim Application is accordingly, disposed of.

[R.I. CHAGLA J.]