

15 - fast - 7743 - 2021 . doc

jsn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.19910 OF 2022

IN

FIRST APPEAL (ST.) NO.7743 OF 2021

Santosh Gorakh Kamble & Anr.

...Applicants/Ori.
Respondents

In the matter between
HDFC General Insurance Co. Ltd.

...Appellants

Versus

Santosh Gorakh Kamble & Ors.

...Respondents

WITH

INTERIM APPLICATION NO.3684 OF 2022

WITH

INTERIM APPLICATION NO.3685 OF 2022

IN

FIRST APPEAL (ST.) NO.7743 OF 2021

HDFC General Insurance Co. Ltd.

...Applicant /
Appellant

Versus

Santosh Gorakh Kamble & Ors.

...Respondents

Ms. Sweta Shah, i/b. A.P. Kulkarni for the Appellants and Applicant
in IA No.3684 and 3685 of 2022.

Mr. G.S. Jadhav for Respondents in FA and for Applicant in 19910 of
2022.

CORAM : R.I. CHAGLA J.

DATE : 21ST NOVEMBER, 2022.

ORDER :

1. Heard learned Counsel for the parties.

2. By the present Interim Application No.19910 of 2022, the Applicant is seeking permission to withdraw the entire amount with accrued interest deposited by the Appellant in the First Appeal before the Motor Accident Claims Tribunal (“MACT”), Baramati in M.A.C.P No.234 of 2016.

3. The Applicant and her husband filed Motor Accident Claim Petition No.234 of 2016 before the MACT, Baramati, Pune praying for compensation arising out of a vehicular accident under Section 166 of the Motor Vehicles Act, 1988. The Tribunal after recording evidence and hearing both sides partly allowed by Claim Petition by its Judgment and Award dated 4th October, 2019 and directed the Respondents to pay amount of Rs.7,86,000/- with proportionate cost and interest @ 9% p.a. from the date of filing of the Claim Petition till its disbursement of the amount.

4. The Appellant has filed the First Appeal which remains to be admitted. This Court by order dated 16th June, 2022 while hearing the Stay Application granted stay of the execution of the decree subject to the condition that the Appellant will deposit the entire amount of compensation as awarded by the MACT, Baramati in MACP No.234 of 2016. The Appellant has thereafter complied with

the said order dated 16th June, 2022 by making deposit of entire amount of compensation.

5. The Applicant has stated that the Applicant No.1 in original Claim Petition Mr. Santosh Gorkah Kamble who was the father of the deceased expired on 3rd February, 2022.

6. Considering that the Applicant had lost her minor son aged 14 years old in the accident and the Claim Petition was partly allowed by Judgment and Award dated 4th October, 2019, the relief sought for in the Interim Application is partly allowed. Hence, the following order:-

(i) The Applicant is permitted to withdraw 50% of the entire amount deposited by the Appellant before the MACT upon furnishing undertaking as against disbursal of the said amount that if the Appellant succeeds in the Appeal, the Applicant / Respondents shall return the amount with interest as such rate as would be directed by this Court.

(ii) If 50% amount is withdrawn by the Respondents, balance amount shall be invested by the MACT in a fixed deposit of a Nationalized Bank.

- (iii) Call for the Record and Proceedings.
- (iv) The paper book shall be filed within a period of one year from the date of this Order.
- (v) The impugned Judgment and Order is stayed.
- (vi) The delay of 425 days in filing this First Appeal is condoned.
- (vii) In view of the above, all Interim Applications are accordingly disposed of.

[R.I. CHAGLA J.]