

Varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 2383 OF 2022
IN
FIRST APPEAL NO. 1576 OF 2003**

Shashikant Suryakant Kadam and AnrApplicants
V/s.

Maharashtra State Road Transport Corporation
and OthersRespondents

Mr. Jagdish B. Choudhary, i/b Raj Legal, Advocate for the Applicant.
Ms Priti Bhansali, a/w Mr G.S. Hegde, Advocate for the Respondent-
MSRTC.

CORAM : GAURI GODSE, J.

DATE : 14th September, 2022.

P.C.

1. This application is filed by Respondent Nos. 2 and 4 in the First Appeal. The First Appeal is filed by the Maharashtra State Board Transport Corporation for challenging the Judgment and Order dated 19th April 2003 passed by the Motor Accident Claims Tribunal. The present Application is filed by Claimant No.2 who is son of the deceased and Claimant No.4 who is widowed mother of the deceased. The Applicants are praying for withdrawal

of some limited amount out of the compensation amount deposited by the Appellant in the Tribunal pursuant to the Order passed in the First Appeal.

2. By an Order dated 15th December 2003 in Civil Application No. 4531 of 2003, this Court had directed the Appellant to deposit the awarded amount in the Tribunal. Learned Advocate for the Applicants state that the said amount is deposited and is also invested in the Bank. Learned Advocate further states that the amount has accrued interest and the same is lying in fixed deposit.

3. This Application is filed by giving reasons in paragraph Nos. 5 and 6 of the Application. The Applicants require amount for the purpose of education of Applicant No.1 and for his medical treatment. Applicants further state that Applicant No.2 is widowed mother of the deceased and is around 79 years of age and requires money for her livelihood and medical treatment.

4. There is no affidavit-in-reply filed by the Appellant. However learned Advocate for the Appellant opposes the Application and states that the Appeal is also filed for challenging the interest amount which is awarded by the Tribunal. She further states that the impugned Order directed the Appellant to pay compensation of Rs. 13,50,300/- with 9% interest which is challenged by the Appellant. She further submits that out of compensation amount only Rs.

2,50,000/- is directed to be paid to Applicant No.1 and Rs 1,50,000/- is directed to be paid to Applicant No.2. She further states that if any amount is allowed to be withdrawn it may be construed as granting enhancement of compensation. Hence she opposes the application.

5. By present Application, Applicant No.1 has prayed for permission to withdraw Rs. 4,50,000/- out of the compensation amount including the accrued interest. Learned Advocate for the Applicants state that the amount of accrued interest will be much more than Rs. 4,50,000/- to the credit of Applicant No. 1. So far as Applicant No. 2 is concerned, she was allowed to withdraw Rs.1,50,000/- and the said amount has also accrued interest as of date. He submits that some reasonable amount may be allowed to be withdrawn by the Applicant No.2. Learned Advocate for Applicants state that he has taken inspection of accounts of the amount which are lying to the credit of the Claimants and he submits that the amount of Rs. 3,39,433/- as on 19th October 2021 was lying to the credit of the Applicant No.2. He therefore submits that out of the said amount she may be permitted to withdraw Rs. 2,50,000/-.

6. I have perused the impugned Judgment and Order as well as Appeal

memo. So far as the objections raised on behalf of the Appellant with respect to challenge to 9% interest awarded by the Tribunal is concerned, I do not find any ground raised in the Appeal memo with respect to the same. I have carefully considered the impugned Judgment and Award as well as the reasons given in the Application. In my view no prejudice will be caused to the Appellant if applicants are allowed to withdraw part of the amount as prayed, subject to submitting an undertaking to the Tribunal stating that the said amount will be brought back in the event First Appeal is allowed.

7. Learned Advocate for the Applicants state that Appeal is of the year 2003 and Applicant No. 2 is a senior citizen and thus it is necessary to issue directions to place the appeal for final hearing. Considering the facts and circumstances, First Appeal can be listed for final hearing, once it is ready.

8. In view of the reasons stated above, Civil Application is allowed as under:

- i. Applicant No.1 is allowed to withdraw Rs. 4,50,000/- out of the amount lying to his credit (including accrued interest) within a period of four weeks from today, subject to the Applicant No.1 filing an undertaking in the Tribunal stating that the said amount will be brought

back in the event First Appeal is allowed.

ii. Applicant No.2 is allowed to withdraw an amount of Rs. 2,50,000/- from the amount lying to her credit (including accrued interest), within a period of four weeks from today, subject to she filing an undertaking in the Tribunal stating that the said amount will be brought back in the event First Appeal is allowed.

iii. Appellant to file private paper book within a period of 8 weeks from today.

iv. Call for Records and Proceedings if not yet received.

v. Printing dispensed with.

vi. Liberty to apply for listing the First Appeal for final hearing, once the First Appeal is ready for final hearing.

[GAURI GODSE, J.]