

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

**INTERIM APPLICATION NO. 4358 OF 2021
IN
FIRST APPEAL (ST.) NO. 17227 OF 2017**

Maya Shashikant Jadhav and ors.

.... Applicants

In the matter between :-

Bombay Electric Supply and Transport
Undertaking, Mumbai
v/s.

.... Appellant

Maya Shashikant Jadhav and ors.

.... Respondents

Mr. Yuvraj Narvankar for the Applicants.

Ms. Heena Shaikh i/b. M.V. Kini and Co. for the Appellant.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 29th JULY, 2022.

P. C. :-

. By this Application, the Applicants who are the original claimants have sought withdrawal of the compensation deposited by the Appellant.

2. Heard learned counsel for the Applicants/original claimants and the learned counsel for the Appellant. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The Applicant No.1 herein is a widow and Applicant Nos.2 and 3 are the children of the deceased – Shashikant who died as a result of the injuries sustained in a motor vehicular accident involving bus bearing no.MH-01-L-8930 owned by the Appellant. The deceased was working as a conductor on the said bus. It was the case of the Applicants/claimants that the accident was caused due to rash and negligent driving by the driver of the bus. The Tribunal after considering the age and income of the deceased and the evidence on record, awarded compensation of Rs.27,19,020/- towards loss of dependency and an amount of Rs.3,25,000/- for other conventional heads. The Tribunal thus awarded total compensation of Rs.30,44,020/-.

4. Learned counsel for the Appellant has opposed the Application mainly on the ground that the claimants have been paid sum of Rs.8,52,000/- under Workmen's Compensation Act. The records reveal that the claimants had not raised claim for compensation under section 10 of the Workmen Compensation Act and the Appellant had suo-moto deposited amount of Rs.8,52,000/- before the Commissioner. In the case of ***Oriental Insurance Company v/s. Dyamavva and ors. (2013) 9 SCC 406***, the Hon'ble Supreme Court has held that the procedure

under section 8 of Workmen's Compensation Act initiated at the behest of the employer 'suo-motu' cannot be considered as an exercise of option by the dependents/claimants to seek compensation under the provisions of the Workmen's Compensation Act, 1923. The dependents/claimants who have not exercised option to seek compensation under section 10 of the Workmen's Compensation Act are not precluded from seeking compensation under section 166 of Motor Vehicles Act. The amount paid by the employer can at the most be deducted from the amount payable under section 166 of the Motor Vehicles Act. In the instant case, the Tribunal has already deducted the amount. Under the circumstances, the objections raised by the Appellants are devoid of merits.

5. Considering the reasons stated in the Application and the other grounds raised in the Appeal memo, the Applicants are permitted to withdraw 50% of the compensation with proportionate interest accrued thereon subject to an undertaking that they shall refund the amount with interest in the event the Appellant succeeds in the Appeal. The Tribunal to re-invest the balance amount of compensation in any nationalized bank until further orders.

6. Interim Application stands disposed of.

PREETI
H JAYANI

(SMT. ANUJA PRABHUDESSAI, J.)

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