

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

**INTERIM APPLICATION NO. 20510 OF 2022
IN
FIRST APPEAL (ST.) NO. 94598 OF 2020**

Shahaji Hindurao Shirtode & Anr. ... Applicants

In the matter between

New India Assurance Co. Ltd. ... Appellant

Versus

Shahaji Hindurao Shirtode & Ors. ... Respondents

Mr. Kuldeep U. Nikam a/w Prasad Avhad and Om Latpate for the Applicant.

Ms. Poonam Mittal for the Appellant.

CORAM : R.I. CHAGLA, J.

DATED : 6th DECEMBER, 2022.

ORDER :

1 Heard the learned Advocate for the parties.

2 By this Interim Application the Applicants are seeking permission to withdraw entire decretal amount as deposited by the Respondents with the District Judge and Member, M.A.C.T., Sangli.

3 The Applicants have stated that the execution of impugned judgment and award had been stayed by order dated 09.11.2020 passed by this Court upon deposit by the Appellant of the entire amount awarded with accrued interest with the M.A.C.T. Sangli.

4 The Applicants state that they are in poor financial condition. The Applicants are the parents of the deceased and after his demise they have had financial issues. The Applicants are of advance age and find it difficult to maintain themselves properly. Accordingly, the present Interim Application has been filed.

5 The learned Advocate appearing for the Appellant has objected to the withdrawal of the entire amount awarded. She has referred to the impugned judgment and order passed by the M.A.C.T. wherein the M.A.C.T. has arrived at inconsistent finding as to the date of the incident. It is mentioned at the outset that the accident took place on 07.04.2018. However, in paragraph 13 of the impugned judgment and order it is mentioned that the accident took place on 06.04.2018 when the Opponent No.1 was riding motorcycle had lost control and by virtue of which the deceased riding pillion expired.

6 Having considered the averments in the application as well as the objection raised by the learned Advocate for the Appellant,

considering that there is no dispute insofar as the deceased having expired in the accident and the only dispute now raised is as to the date of the accident, without prejudice to the rights and contentions of the Appellant in the Appeal, the Applicants are permitted to withdraw the sum of Rs.9,30,800/-with accrued interest. This is subject to their furnishing an undertaking that in the event the Appellant succeeds in the Appeal, the Applicants shall return the amount with interest at such rate as determine by this Court.

7 It is noted that the M.A.C.T. in the impugned judgment and order had directed that out of share of each of the Petitioner an amount of Rs.5,00,000/- be deposited in any Nationalized Bank for a period of 5 years. The Petitioners/Respondents herein are entitled to get interest on the deposit amount at quarterly rest. The amount of Rs.5,00,000/- deposited by the Appellant shall remain in Fixed Deposit of Nationalized Bank till hearing and disposal of the First Appeal.

8 Interim Application is accordingly disposed of.

(R.I. CHAGLA, J.)