

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

**CIVIL APPLICATION NO. 414 OF 2020
IN
FIRST APPEAL (ST.) NO. 30502 OF 2014**

Dharmistha Prakash Patel & Ors. ... Applicants
(Orig. Respondent No.1)

In the matter between

The Bombay Municipal Corporation
through the General Manager
BEST Undertaking ... Appellant

Versus

Dharmistha Prakash Patel & Ors. ... Respondents

**WITH
CIVIL APPLICATION NO. 4304 OF 2015
IN
FIRST APPEAL (ST.) NO. 30502 OF 2014**

Ms. Karishma Jhaveri i/b Navdeep Vora & Associates for the Appellant -
B.E.S.T.

Mr. Sandeep S. Jinsiwale for Respondent Nos.1 to 3.

CORAM : R.I. CHAGLA, J.

DATED : 23rd NOVEMBER, 2022.

ORDER :

1 Heard the learned Advocate appearing for the
Applicants/Respondents.

2 By the Civil Application the Applicants are applying for withdrawal of the entire amount with interest deposited by the Appellant before the Motor Accident Claims Tribunal (M.A.C.T.), Mumbai.

3 The Applicants states that the order of M.A.C.T. was passed on 21.03.2014 by which the amount of Rs.12,67,500/- inclusive of NFL along with interest @7.5% p.a. was awarded from the date of application, till realisation to the Applicants/Respondents herein.

4 The operation and implementation of the impugned judgment and award dated 21.03.2014 passed by the M.A.C.T., Mumbai was stayed by this Court vide order dated 07.01.2016 till hearing and final disposal of the Appeal on condition that the Appellant Insurance Company deposit the entire awarded amount with interest, cost, if any, in the Tribunal within six weeks from the date of the said order, failing which the Civil Application shall stand dismissed without further reference to the Court. This Court further directed that if the entire awarded amount is not deposited within stipulated time as stated above, the Respondents/Claimants are entitled to execute the award as per law. If the entire awarded amount is deposited within stipulated time, the Respondents/Claimants are entitled to withdraw the amount, along with the accrued interest, without furnishing any security subject to out come

of the Appeal. Claimant No.1 to withdraw Rs.1,50,000/-, Claimant No.2 to withdraw Rs.50,000/- and Claimant No.3 to withdraw Rs.50,000/-. Thus, totaling the amount of Rs.2,50,000/-.

5 The Tribunal was directed to invest the remaining award amount in a Fixed Deposit account of any Nationalized Bank, initially for a period of one year and the same to be renewed from time to time till hearing and final disposal of the Appeal. Liberty was granted to the Claimants to prefer an appropriate application for withdrawal of further amount, which will be decided on its own merits.

6 The Appellants herein pursuant to the said order dated 07.01.2016 have depositing the entire awarded amount within the stipulated time. The Respondents/Claimants have not withdrawn the amount of Rs.2,50,000/- which was permitted to be withdrawn by the Respondents/Claimants by the said order dated 07.01.2016.

7 The learned Advocate for the Respondents/Claimants has stated that the present Civil Application which had been filed in 2019 sought for withdrawal of the entire awarded amount with interest deposited by the Appellant before the M.A.C.T. He has submitted that the deceased was the sole breadwinner of the family. The Applicant No.1 is the widow of the deceased and Applicant Nos.2 and 3 are parents of the

deceased and Applicant Nos.4 and 5 are the children of the deceased. The Applicants submit that Applicant Nos.2 and 3 being the parents of the deceased are old and therefore, require expenses for their medical treatment. The children of the deceased are still taking education and require the amounts which have been awarded. The deceased was earning Rs.15,000/- per month prior to his demise and after his death there is no earning member in the family and no regular source of income for the survival of the Applicants/Claimants. Accordingly the present Interim Application has been taken out for withdrawal of the entire amount.

8 The learned Advocate appearing for the Appellants has submitted that the Applicants/Claimants have not even withdrawn the amount which had been allowed to be withdrawn by order of this Court dated 07.01.2016 which is in sum of Rs.2,50,000/-. Accordingly, inference should be drawn that the Respondents/Claimants were not in need of the amount awarded. She has submitted that in the event this Court was to allow the Applicants/Claimants to withdraw the amount awarded, this should not be excess of 25% of the awarded amount.

9 Having considered the submissions and particularly taking note of the fact that the operation and implementation of the impugned

judgment and award dated 21.03.2014 passed by the M.A.C.T., Mumbai, is stayed, subject to the Appellant depositing the entire awarded amount within six weeks from the order dated 07.01.2016 which the Appellant has complied with. The Respondents/Claimants were held to be entitled to withdraw the amount of Rs.2,50,000/- with accrued interest without furnishing any security subject to the outcome of the Appeal. However, despite the said order dated 07.01.2016, the Respondents have failed to withdraw the said amount. However, considering that the deceased was sole breadwinner and that the Applicants are now pressing the relief for withdrawal in the present Civil Application filed on 27.03.2019, the Respondents/Claimants are permitted to withdraw 40% of the amount together with accrued interest which the M.A.C.T. had awarded by the judgment dated 21.03.2014. This shall be upon furnishing an undertaking within two weeks of this order that if the Appellant succeed in the Appeal, the Respondent shall return the amount with interest at such rate as directed by this Court depending upon the outcome of the First Appeal.

10 In the event 50% of the awarded amount is withdrawn by the Respondents/Claimants upon furnishing the undertaking, balance amount shall be invested by the M.A.C.T. in Fixed Deposit in a Nationalized Bank.

11 Civil Application is accordingly disposed of.

(R.I. CHAGLA, J.)

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