

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

**INTERIM APPLICATION NO. 18978 OF 2022
IN
FIRST APPEAL (ST.) NO. 19721 OF 2022**

Mukesh Dashrath Kute & Anr. ... Applicants

Versus

United India Insurance Co. Ltd. & Anr. ... Respondents

In the matter of

The United India Insurance Co. Ltd. ... Appellant

Versus

Mukesh Dashrath Kute & Ors. ... Respondents

Mr. Aniket Nangare i/b Nitesh Bhutekar for the Appellants.
Mr. T.J. Mendon for the Respondents.

CORAM : R.I. CHAGLA, J.

DATED : 23rd NOVEMBER, 2022.

ORDER :

1 By this Interim Application the Applicants are seeking permission to withdraw the amount deposited in the M.A.C.T., Mumbai by the Appellant.

2 The Applicants are the husband and son of the deceased who met with an accident on 20.11.2014 which resulted into death. The Applicants have further stated that they are completely depending on the income of the deceased and due to death they have lost the financial support of the family. The Applicants have further stated that due to sudden deprivation of the income that was being generated by the deceased, who worked in a hospital, they have to rely upon friends and relatives for financial help for livelihood. The Applicants have further submitted that they do not have sufficient income for their livelihood and are dependent on friends and well-wishers for their survival.

3 The learned Advocate appearing for the Appellant states that pursuant to the order dated 24.08.2022, the Appellant has deposited the entire awarded amount with the M.A.C.T. Accordingly, the impugned judgment of M.A.C.T. has been stayed. The learned Advocate for the Applicant further states that Applicant No.1 has in view of the demise of his wife, been given a job with the Municipal Corporation on compassionate basis. Learned Advocate has further submitted that the driver of the vehicle had a driving licence which had expired and which was not renewed.

4 The learned Advocate appearing for the Applicants has pointed to the operative part of the impugned judgment of M.A.C.T. wherein M.A.C.T. has granted liberty to the Appellant herein to recover the said amount from the insured i.e. owner of the absconding vehicle.

5 I have considered the rival submissions as well as noted that the entire claim of the Respondents was awarded by the impugned judgment of M.A.C.T. dated 03.03.2022, and that the Applicants having be held to be entitled to receive the amount of compensation in equal share as per the operative part of the impugned judgment. Further, the Appellant herein has deposited the entire awarded amount with the M.A.C.T. pursuant to order dated 24.08.2022 which had stayed the impugned judgment subject to the deposit. A case is made out for the Applicants to be granted liberty to withdraw 50% of the entire claim amount deposited by the Appellant before the M.A.C.T. with proportionate interest. Hence, the following order :

- (i) The Applicants are at liberty to withdraw 50% of the amount deposited by the Appellant with the M.A.C.T. with proportionate interest subject to furnishing an undertaking at the time of disbursement of the said amount to the effect that if the Appellant succeeds in the Appeal, the

Applicants/Respondents shall return the amount with interest as such rate as may be determined by this Court.

ii) The balance 50% amount shall be invested in the Fixed Deposit with a Nationalized Bank.

iii) Interim Application is accordingly disposed of.

(R.I. CHAGLA, J.)