

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO. 1473 OF 2022
IN
FIRST APPEAL NO. 197 OF 2022

The SBI General Insurance Co. Ltd.
..VS..
Devendra S/o Santosh Kharat and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D.N. Kukday, Advocate for appellant.
Mr. K.P. Mirache, Advocate for applicants/respondent Nos.1 & 2.

CORAM : ABHAY AHUJA, J.

DATED : 22.09.2022

Heard.

2. This is an application seeking withdrawal of the amount deposited by the appellant on 17.03.2022, which is lying with the Nazir of this Court.

3. Mr. Mirache, learned counsel for the claimant/respondent would submit that the deceased was 26 years old and was a final year medical student. He would submit that respondent Nos.1 and 2 – claimants are the parents of the deceased who had filed a claim before the Motor Accident Claims Tribunal. He submits that apart from the mental agony, the claimants are also having a financial difficulty and therefore seeking to withdraw the amount of compensation deposited in this Court.

4. Mr. Kukday learned counsel for the appellant – Insurance Company submits that 50% of amount deposited may be allowed to be withdrawn by the claimants subject to usual undertaking. Learned counsel also points out that after the filing of the appeal, the respondent No.1 has passed away and this application for withdrawal would now be by respondent No.2 who is the mother of the deceased.

5. Having heard learned counsel for the parties and having perused the Civil Application, the following order is passed :

Order

(i) Let 50% of the amount deposited with the Nazir of this Court be allowed to be withdrawn by the claimant/respondent No.2 on furnishing an undertaking to this Court that in the event the impugned order is set aside or modified, the said amount would be returned to the appellant.

(ii) Registry to act accordingly.

6. Civil Application stands disposed.

FIRST APPEAL NO. 197 OF 2022

Heard.

2. This is an appeal challenging the order dated 13.10.2021 passed by the Motor Accident Claims

Tribunal, Nagpur in Claim Petition No. 557 of 2016, partly allowing the claim of the respondents.

3. Mr. Kukday, learned counsel for the appellant – Insurance Company submits that in the facts and circumstances of the case, the Tribunal ought to have considered the aspect of dependency inasmuch as the respondent No.1 (now deceased) was himself in service and their son who died in the accident was only a student. He would submit that therefore though there will be loss to the estate however, the aspect of dependency should have been appropriately considered by the Tribunal before granting the compensation. He submits that the appeal be therefore admitted.

4. Learned counsel for the respondents submits that although respondent No.1 was in service however, during the pendency of the appeal he has passed away and therefore, the dependency factor should have more weight than loss to the estate.

5. Having heard the learned counsel for the parties and having perused the appeal, the following order is passed :

Order

- (i) **Admit.**
- (ii) Registry to call for record and proceedings within a period of four weeks.

(iii) Private paper book be filed within four weeks thereafter and the same be served upon respondents within a period of two weeks thereafter with an affidavit of service with tangible proof to be filed in this Court by the next date.

6. List the Appeal on 01.12.2022.

(Abhay Ahuja, J.)

Kirtak