

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.9578 OF 2023
IN FAST/32583/2022**

**SMT. MINAKSHI SUBHASH MHAISMALE AND ORS
VS
DIVISIONAL CONTROLLER MAHARASHTRA STATE
ROAD TRANSPORT CORPOR. THROUGH ITS
D.C.AURANGABAD AND ORS**

...

Mr. D. S. Pagare, Advocate for the Applicants.
Mr. A. D. Wange, Advocate for Respondent No.1.
Mr. P. P. Pangal, Advocate for Respondent Nos.3 and 4.

...

**AND
CIVIL APPLICATION NO.9579 OF 2023
IN FAST/32583/2022**

**PARVATABAI DAMODAR MHAISMALE AND ORS
VS
THE DIVISIONAL CONTROLLER MAHARASHTRA STATE
ROAD TRANSPORT CORPORATION AND ORS**

...

Mr. P. P. Pangal, Advocate for the Applicants.
Mr. A. D. Wange, Advocate for Respondent No.1.
Mr. V. D. Pagare, Advocate for Respondent Nos.2 to 4.
Mr. K. N. Shaikh, Advocate for Respondent No.5.

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 04th AUGUST, 2023.

PER COURT:-

1. By these applications, the applicants are seeking withdrawal of the amount deposited by the respondent-MSRTC in pursuance of the award dated 15.01.2022 passed in MACP No.466/2017. It is contended on behalf of the

applicants/claimants that they have lost bread earner of the family and facing financial difficulties to pull on day to day life. According to them, they are waiting for just compensation since 2017.

2. The learned Advocate appearing for the respondent-Corporation opposes the prayer. He submits that the FIR was registered against deceased. The Tribunal ignoring material aspects of contributory negligence, mulcted entire liability on the shoulder of the MSRTC holding that the bus driver was sole responsible for the accident. He would submit that the excessive and exorbitant award is passed. He urges to place the matter for final disposal at the admission stage by calling for Record and Proceedings.

3. Having considered the submissions advanced, it is apparent that the accidental death of the deceased Subhash Mhaismale is not in dispute. Involvement of MSRTC bus in the accident is also not disputed. The Tribunal on evaluation of the evidence recorded finding of negligence against MSRTC driver. *Prima facie*, findings are in consonance with record and the award is in favour of the claimants/applicants. So also, there are good grounds in an appeal those can be considered at the time of final hearing. At this stage, it would be appropriate to permit partial withdrawal of the amount to the applicants subject to certain conditions. Hence, the following order:-

ORDER

- a. Civil Applications are allowed.
- b. The applicant no.1 Minakshi Subhash Mhaismale is permitted to withdraw total amount of Rs.15,00,000/- (Rs. Fifteen

Lakhs Only) out of the amount deposited by respondent-Corporation on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court.

c. The original respondent nos.3 and 4 i.e. parents of the deceased and applicants in CA/9579/2023 are permitted to withdraw Rs.3,00,000/- (Rs. Three Lakhs Only) out of the amount deposited by the respondent-Corporation on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court.

d. The balance amount shall be kept in Fixed Deposit with the Nationalized Bank initially for a period of one year with renewal clause till disposal of appeal.

e. Civil Applications are disposed of.

(S. G. CHAPALGAONKAR)
JUDGE