

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

**INTERIM APPLICATION NO. 580 OF 2023
IN
FIRST APPEAL (St.) NO. 27005 OF 2018**

Sau. Ashabai Prakash Deshmukh & Ors.

....Applicants

Versus

The Divisional Manager New
India Assurance Co. Ltd. & Anr.

....Respondents

Mr. Pritesh Bohade for the Applicants.
Mr. Rajesh Kanojia a/w Nikita Singh i/b Res Juris for the
Respondents in IA/580/2023.

CORAM : S. G. DIGE, J.

DATE : 31st JANUARY, 2023.

P.C. :

1. Heard learned counsel for the Applicant & learned counsel for the respondents.
2. The learned counsel for the Applicant submit that Applicants are the parents of deceased. The deceased was the Karta of family. He was the only earning member of their family. Applicants are the old age persons, they have no source of income for livelihood.

3. The Applicants require the amount for their medical treatment and day to day activities. Hence, requested the applicants be allowed to withdraw the amount deposited by Respondent No.1.

4. The learned counsel for Respondent No. 1 strongly objected to allow the application on 3 grounds. One of the ground is that only 25% contributing negligence of deceased is considered by the tribunal. Whereas the accident was occurred due to sole negligence of deceased.

5. Learned counsel further submit that the tribunal has applied wrong multiply while calculating the compensation the multiplier should be as per the age of parents of deceased and the tribunal has considered the income of deceased on higher side though the deceased was unemployed.

6. Learned counsel further submit that if this Court permits to withdraw the amount and respondent succeeds in the appeal, it would be difficult for the respondent to recover the amount hence requested to reject the application.

7. I have heard both the learned counsel admittedly, the deceased died in the accident the issue raised by the respondent can be considered at the time of final hearing the appeal.

8. The applicants are the old age parents of the deceased

they require the amount for their daily expenses and medical treatment. Hence, I pass following Order.

ORDER

i. Application is allowed, applicants are permitted to withdraw 50% amount along with accrued interest thereon out of deposited amount on furnishing undertaking.

ii. Application disposed of.

(S. G. DIGE, J.)