

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.2206 OF 2023
IN
FIRST APPEAL NO. 362 OF 2017**

Nanda Balaji @ Devidas NikamApplicant
versus
The New India Assurance Company Ltd., Nashik....Respondent

Mr. Sharad T. Bhosale, Advocate for the Applicant.
Mr. D. R. Mahadik along with Ms. Pooja Yadav, Advocate for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd MAY, 2023.

P.C. :

1. Heard learned counsel for the applicant and learned counsel for respondent – Corporation.
2. Learned counsel for the applicant submits that the deceased was the only son of the applicant, he was the earning member of the applicant's family. After the death of her son, applicant's husband also died. The applicant has no source of income, she need the amount for her daily expenses and medical treatment. Hence, requested to allow the application.

3. Learned counsel for respondent-Corporation objected to allow the application on the ground that earlier the applicant was permitted to withdraw 50% amount, out of the deposited amount. The insurance policy of the offending vehicle was act only policy but the Tribunal has not considered this fact and has passed the impugned judgment and order which is under challenge. If the respondent -Corporation succeeds in the appeal, it would be difficult for the respondent to recover the amount, if permission to withdraw the amount is granted. Hence, requested to dismiss the application.

4. I have heard both learned counsel. It was the applicant's case that deceased was her only son and earning member of the family. The applicant has no source of income. The applicant's husband died during the pendency of the appeal. The applicant needs the amount for her daily expenses and medical treatment. The grounds raised by the respondent-Corporation can be considered at the time of final hearing of the appeal. Hence, I pass the following order :

ORDER

1. The application is allowed.

2. The applicant is permitted to withdraw 20% amount along with accrued interest therein, out of the deposited amount, on furnishing surety in the like amount.

The application is disposed of.

(SHIVKUMAR DIGE, J.)