

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 4083 OF 2023
IN
FIRST APPEAL NO. 408 OF 2021

Vitthal Gulabrao Bathe & Ors. ...Applicants

IN THE MATTER BETWEEN

The New India Assurance Co. Ltd. ...Appellant

Versus

Vitthal Gulabrao Bathe & Ors. ...Respondents

Mr. Yogesh Pande for the Applicants/Respondents.

Mr. Rajesh Kanojia i/by Res Juris for the Appellant.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th APRIL, 2023.

P. C. :

1. Heard learned Counsel for the Applicants and learned Counsel for Appellant.

2. Learned Counsel for the Applicants submits that the deceased was wife of Applicant No.1 and mother of Applicant Nos. 2 and 3. The deceased was bread earner of Applicants family. After death of deceased, Applicants are facing hardship. They have no source of income. The Applicants need the amount for their daily expenses and paying college fees of Applicant Nos. 2 and 3. Hence, requested to allow the Application.

3. Learned Counsel for the Appellant strongly objected to allow the Application on the ground that there was breach of terms of insurance policy. The offending vehicle had passengers more than permitted capacity but this fact was not considered by the Tribunal and awarded exorbitant and excessive compensation. Hence, requested to dismiss the Application.

4. I have heard both learned Counsel.

5. The deceased was bread earner of the Applicants' family. The Applicants need the amount for their daily expenses and paying college fees of Applicant Nos. 2 and 3. The grounds raised by the Appellant can be considered at the time of the final hearing of the Appeal. Hence, I pass following order :

ORDER

- i. Application is allowed.
 - ii. The Applicant is permitted to withdraw 25% amount out of deposited amount alongwith accrued interest thereon, on furnishing an undertaking.
 - iii. Application is disposed of.
6. Learned Counsel for the Applicants submits that

Applicant Nos. 2 and 3 were minor at the time of filing the Appeal.

Now they become major and they be permitted to withdraw the amount.

7. Applicant Nos. 2 and 3 are permitted to withdraw the amount as per their share.

(SHIVKUMAR DIGE, J.)