

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**CIVIL APPLICATION NO.2280 OF 2022 IN
FIRST APPEAL (ST.) NO.14009 OF 2022**

(The Cholamandalam M.S. Insurance Co. Ltd. Vs. Abdul Hamid s/o Abdul Rajjak & ors.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Advocate Vijayalaxmi Toshniwal, for the appellant.
Shri K.P. Mirache, Advocate for respondent No.1.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 20, 2023.

Await service for respondent No.3 for want of time.

2. Re-issue notice to the respondents, returnable on 13/02/2023.

CIVIL APPLICATION NO.2281/2022

Heard.

2. By this application, the appellant is seeking stay to the effect, operation and implementation of the judgment and award dated 10/01/2020 passed in Claim Petition No.751/2013 by the Member, Motor Accident Claims Tribunal, Nagpur. The appellant is already deposited entire decretal amount.

3. In view of depositing the amount by the appellant, the operation, execution and implementation of the judgment and award is hereby stayed till final disposal of the appeal.

CIVIL APPLICATION NO.157/2023

Heard.

2. By this application, respondent No.1 is seeking withdrawal of the amount with accrued interest. Respondent No.2 is already reported to be dead and respondent No.1 is the only legal representative of respondent No.2.

3. It is submitted by Shri Mirache, that respondent No.1 is the father and due to accidental death of his son he has no source of income. He was totally dependent on the income of the deceased. He is going through financial crisis, therefore, he be permitted to withdraw the amount.

4. Said application is strongly opposed by learned Counsel for the appellant on the ground that deceased was travelling in the Matador as a gratuitous passenger and the Insurance company is not liable to pay the compensation, and therefore, respondent No.1 shall not be allowed to withdraw the amount. She invited my attention towards the ground No.4 of the appeal memo wherein she has specifically mentioned about the same.

5. Shri Mirache, learned Counsel for respondent No.1 invited my attention towards observation of the Tribunal wherein it is specifically observed that the petition in Claim Petition No.751/2013 has stated during cross-examination that his son was working as a labour with respondent No.1 – Dinesh s/o Ramasumer Shahu (herein respondent No.3) and doing job of loading and unloading goods.

6. It is further observed by the Tribunal that there was no suggestion by the Insurance Company or no evidence is brought on record to show that the deceased was travelling in the vehicle as a passenger. Admittedly, the vehicle involved in the accident is a goods vehicle. On the basis of evidence adduced before the Tribunal, the Tribunal has come to the conclusion that deceased is the son of respondent No.1, was not the passenger, but he was travelling as a labour in the offending vehicle. This observation is made by the Tribunal on the basis of evidence adduced before the Tribunal.

7. At this stage, considering the submissions made by the respondent No.1 and the observation of the Tribunal in the judgment, respondent No.1 can be permitted to withdraw 50% of the amount.

8. In view of the above circumstances, I proceed to pass the following order :

(i) Civil application is allowed.

(ii) Respondent No.1 is allowed to withdraw 50% of the amount deposited, on furnishing usual undertaking and surety to that extent.

(URMILA JOSHI-PHALKE, J.)

**Divya*