

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

**INTERIM APPLICATION NO. 7946 OF 2024
IN
FIRST APPEAL NO. 634 OF 2024**

Sabina Khatun Abaidur Rahaman And Ors. ... Applicants (Org
Claimants).

IN THE MATTER BETWEEN

The New India Assurance Co. Ltd., Mumbai ... Appellants

Vs.

Sabina Khatun Abaidur Rahaman And Ors. ... Respondents

Adv. Sandeep Jinsiwale, for the Appellants.

Adv. Amol Gatne h/f Adv. Swati Mehta for the Applicants.

CORAM : KISHORE C. SANT, J.

DATE : 25th APRIL, 2024

PC.:-

1. This Application is preferred by the Original Claimants seeking withdrawal of amount of compensation deposited by the Appellant/Insurance Company in the office of the learned Commissioner under the E.C. Act.

2. It is the case of the Claimants that they were depending upon deceased employee, husband of Applicant No. 1 and father of Applicant Nos. 2 to 4. Applicant Nos. 5 and 6 are parents of the deceased they lost the earning member in an accident on 18.03.2021,

Applicant Nos. 2 to 4 are still minors. Applicant Nos. 5 and 6 are old aged persons they are not in a position to earn livelihood. The Applicant No. 1 is the wife of the deceased but she also is not in a position to earn her livelihood. He submits that when there is a Judgment and Order in favour of the Claimants they should not be deprived of the fruits of the Judgment. They are ready to give an undertaking that in case the Appeal is allowed they shall re-deposit the amount with interest.

3. This Application is opposed by the Appellant/Insurance Company. In the alternative it is submitted that if the amount is allowed to be withdrawn the Applicant be put to certain conditions.

4. After hearing the parties this Court finds that the Applicants have succeeded before the Commissioner by establishing their right. It would not be proper to deprive of their right with compensation though succeeding before the learned Commissioner. Hence the following Order.

ORDER

- a)** The Interim Application is partly allowed.
- b)** The Applicants are entitled to withdraw 50% of the amount of compensation along with accrued interest.
- c)** The Applicants shall give an undertaking to this Court that in case the Appeal is allowed they shall re-deposit the amount in this Court. The undertaking for

Applicant Nos. 1 to 4 be filed by Applicant No. 1.

d) After giving the undertaking in the office of learned Commissioner within 2 weeks from today, the learned Commissioner to disburse 50% of the amount on taking undertaking as indicated above.

e) The balance amount shall be deposited in the fixed deposit in any Nationalize Bank to be renewed periodically till the disposal of the Appeal.

f) The Interim Application stands disposed of.

(KISHORE C. SANT, J.)