

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.17196 OF 2023
IN
FIRST APPEAL (ST.) NO.30449 OF 2023

Divisional Manager, Royal Sundaram
General Insurance Co. Ltd., Chennai ...Applicant

vs.

Sindhubai Balu @ Balsaheb More and Ors. ...Respondents

WITH
INTERIM APPLICATION NO.11107 OF 2024
IN
FIRST APPEAL (ST.) NO.30449 OF 2023

Sindhubai Balu @ Balsaheb More and Ors. ...Applicants

vs.

Divisional Manager, Royal Sundara
General Insurance Co. Ltd., Chennai ...Respondents

WITH
INTERIM APPLICATION NO.17197 OF 2023
IN
FIRST APPEAL (ST.) NO.309 OF 2023

Divisional Manager, Royal Sundaram
General Insurance Co. Ltd., Chennai ...Applicant

vs.

Sindhubai Balu @ Balsaheb More and Ors. ...Respondents

Mr.Rahul Mehta i/b KMC Legal Venture for the Appellant :-	Advocate for Appellant in FA(st.) 30449 of 2023 and for Applicant in IA/17196/2023 and IA/17197/2023 (V.C.).
Mr. Vinit Prakash Ahuja :-	Advocate for Respondent Nos. 1 to 5 in FA(st.)/30449/2023 and IA/17196/2023 and IA/17197/2023 and for Applicant in IA/11107/2024.

CORAM : S. M. MODAK, J.

DATE : 9th SEPTEMBER, 2024

P. C. :-

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1. Heard, learned Counsel Mr.Ahuja, learned Counsel for the Claimants/Respondent Nos.1 to 5, and I have also heard learned Counsel Mr.Mehata for the Appellant/Insurance Company.
2. The Claimant No.1 is the wife of the deceased. Whereas, the Claimant Nos.2,3, and 4 are the children of the deceased. Whereas, the Claimant No.5 is the mother of the deceased.
3. The Tribunal has directed the Insurance Company and owner to pay jointly and severally. This Award is challenged by the Appellant Company. One of the grounds is, contributory negligence of the deceased. The another ground is, method of considering the income. The deceased was driving motorcycle and he was not wearing helmet.

This objection was turned down. Furthermore, the Form No.16 was not filed by the Claimants. Further ground is that Claimant Nos.2, 3 and 4 are major.

4. Whereas, according to learned Advocate Mr.Ahuja, they are badly in need of money and Claimant Nos. 2, 3 and 4 are not earning. The contention is raised and can be considered at the time of hearing of the appeal. At this juncture, the Claimants are entitled to withdraw 50% of the deposited amount. Hence following order:-

ORDER

- (a) Respondent Nos.1 to 5 are permitted to withdraw 50% of the deposited amount along with the accrued interest from the Motor Accident Claims Tribunal, Nashik on furnishing usual undertaking. Tribunal to apportion the amount.

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5. Heard both sides.
6. Delay is opposed. For the reasons stated in the Application, the delay is condoned.
7. **The Application is disposed of.**

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8. Issue notice to Respondents, returnable on **11th November 2024**.
9. Learned Counsel for the Respondent Nos.1 to 5 waives notice. Notice to Respondent No.6 is dispensed with considering the facts and circumstances.
10. **Call the Record and Proceedings.**
11. **Compilation be filed within six weeks from today.**

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12. The amount is already deposited.
13. **The Interim Application stands disposed of.**

[S. M. MODAK, J.]