

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 13328 OF 2024  
IN  
FIRST APPEAL NO. 1310 OF 2024

Bhavesh Santosh Bhoir & Ors ...Applicants

*Versus*

In The Matter Between

IFFCO Tokio General Insurance Co. Ltd. ...Appellant

*Versus*

Papita Santosh Bhoir & Ors ...Respondents

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**Mr. Vishal Patil, for the Applicants.**

**Mr. Abhijit Kulkarni, a/w Sweta Shah, Abhishek Roy for original Appellant.**

**Mr. Sanjay Patil, for original Respondent No.1.**

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**CORAM : B. P. COLABAWALLA &  
SOMASEKHAR SUNDARESAN, JJ.**

**DATE : NOVEMBER 14, 2024**

**PC :**

1. The above Interim Application is filed by the Applicants seeking to withdraw 50% of the compensation amount out of the entire compensation amount deposited by the Appellant-Insurance Company in the above Appeal with the Motor Accident Claims Tribunal, Thane (“**MACT, Thane**”) after passing of the order dated 26<sup>th</sup> August, 2015 by

this Court in Civil Application No. 2853 of 2015 preferred by the Appellant in the above First Appeal.

2. Applicant No.1 is the son of the deceased, namely, Santosh Shantaram Bhoir, who passed away in a vehicular accident on 25<sup>th</sup> June, 2008. The said deceased was 28 years old at the time of the accident. At the time when the accident took place, Applicant No.1 was two years old. He has now attained the age of majority. Applicant Nos.2 and 3 are the mother and father of the deceased and who are currently 73 and 68 years old. As far as Respondent No.3 is concerned, she was the wife of the deceased. In 2013, Respondent No.3 has remarried and also has a child from her second marriage.

3. By the impugned judgment and order, the MACT, Thane held the Appellant-Insurance Company as well as the owner of the truck jointly and severally liable to pay compensation of Rs.43,55,204/- not only to the Applicants herein but also to the Respondent No.3-wife. This Compensation was to be paid together with interest at 7% per annum from the date of the claim petition till realization of the amount provided the Appellant-Insurance Company and/or the owner of the truck deposited the amount within a period of one month from the date of the order. If the deposit was not made within stipulated period then

the interest payable was at 9% per annum from the date of the claim petition till realization of the amount. The ratio in which the aforesaid amounts were to be paid was 50% to the Respondent No.3-wife, 30% to Applicant No.1- the son, and 10% each to the mother and father of the deceased, namely, Applicant Nos.2 and 3 in the present Interim Application. From the record we find that the Appellant-Insurance Company has deposited a sum of Rs.70,24,860/- vide cheque dated 19<sup>th</sup> September, 2015 with the MACT, Thane.

4. Mr. Kulkarni, the learned Counsel appearing on behalf of the Appellant-Insurance Company submitted that the entire premise of which compensation is awarded in the impugned judgment and order is incorrect inasmuch as the notional income of the deceased considered by the MACT, Thane is Rs.20,000/- per month (since he was not a tax payer), when, in fact, as per the judgment of the Hon'ble Supreme Court in *Syed Sadiq & Ors. v. Divisional Manager, United India Insurance Company Ltd<sup>1</sup>*, the notional income ought to have been calculated at approximately Rs.6,500/-. If this be the case, then the compensation awarded would be drastically reduced. He, therefore, strongly opposed the prayer of the Applicants to withdraw 50% of the compensation amount (30%+10%+10%) deposited before the MACT, Thane.

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<sup>1</sup> (2014) 2 SCC 735

5. We have heard Mr. Kulkarni at great length. As mentioned earlier, the Appellant-Insurance Company has deposited with the MACT, Thane a sum of approximately Rs.70 Lakhs. This was in the year 2015. As per the impugned order, if the deposit was not made within one month of passing of the said order, then the Appellant-Insurance Company would be liable to pay interest at 9% per annum. Even if we were to assume that what Mr. Kulkarni submits is correct, we find that allowing the Applicants herein to withdraw a sum of Rs.20 Lakhs by giving an undertaking to this Court that they will bring back the money, in the event the present Appeal succeeds, or any part thereof, would meet the ends of justice. We said this because on doing an approximate calculation, we find that even if what Mr. Kulkarni submits is correct on the quantum, this would approximately be the entitlement of the Applicants herein.

6. Considering these circumstances, we direct that the Applicants can withdraw a sum of Rs.20 Lakhs (out of the money that is deposited with the MACT, Thane) on the Applicants giving, executing a joint written undertaking to this Court that the said amount of Rs.20 Lakhs or any part thereof as this Court may direct shall be brought back on such terms and conditions as this Court may direct at the hearing of the Appeal. A copy of the undertaking filed in this Court shall also be

placed on record of the MACT, Thane so as to enable that authority to allow withdrawal of Rs.20 Lakhs as directed above.

7. The above Interim Application is disposed of in the aforesaid terms. However, there shall be no order as to costs.

8. Considering that the above First Appeal is of the year 2015 peremptorily list the same for hearing and final disposal on 15<sup>th</sup> January, 2025.

9. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[ SOMASEKHAR SUNDARESAN, J.]

[ B. P. COLABAWALLA, J.]