



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

28 CIVIL APPLICATION NO. 803 OF 2025
IN FAST/19694/2024

WITH

CIVIL APPLICATION NO. 9370 OF 2024
IN FAST/19694/2024

WITH

CIVIL APPLICATION NO. 9371 OF 2024
IN FAST/19694/2024

MOHSIN AYUB SAYYAD AND ORS

VERSUS

CHOLA MS GENARAL INSURANCE CO LTD AND ANR

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Advocate for Applicants : Mr. Undre Vikram Shivaji
(Through V.C.)

Advocate for Respondent No.1 : Mr.Abhijit G. Choudhari

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : 24.01.2025

PER COURT :-

ORDER ON WITHDRAWAL APPLICATION :-

1. Heard learned Advocates appearing for respective parties.

2. Applicants are Original Claimants in MACP No. 25 of

2021. They instituted a claim seeking compensation towards accidental death of Parvin Mosin Sayyad, who was wife of applicant No. 1 and mother of applicant Nos. 2 & 3.

3. The claim was contested on behalf of Insurance Company on the ground that alleged offending Car was not actually involved in the accident. FIR has been lodged after 28 days and it is a collusive claim. The learned Tribunal relied upon police papers and accepted the case of claimants and passed an award for Rs. 49,46,000/- along with interest @ 7% p.a. from the date of institution of the petition.

4. Aggrieved, insurer filed present appeal assailing the award. Learned Advocate Mr. Choudhari, appearing for respondent Insurance Company invited attention of this Court to the fact that there is delay of 28 days caused in lodging FIR. According to him, the alleged eye witness is a got up witness and vehicle has been planted in the accident. However, as rightly observed by the Tribunal except delay in FIR, no other material is brought on record to discard the case of the Claimants/Applicants. Mr. Chaudhari also submits that the

award is excessive and exorbitant. Considering reasons stated in the impugned order and the nature of challenge raised in this appeal, Claimants can certainly be allowed to partly withdraw amount deposited by the Insurance Company, by putting certain conditions. However, compensation amount falling to the share of minor Claimants needs to be kept in Fixed Deposits in tune with directions of the Tribunal in Clause-5 of the operative order. In that view of the matter following order :

ORDER

- (i) The Civil Application is partly allowed.
- (ii) The compensation amount falling to the share of Claimant No. 1 alongwith proportionate interest be disbursed to him, subject to condition that he furnishes undertaking to the satisfaction of the Registrar, (Judicial) of this Court that he will re-deposit the amount if any directions are given at the time of final disposal of the appeal.
- (iii) The amount that fall to the shares of minor Claimants shall be kept in Fixed Deposits, in any Nationalized Bank, to be renewed from time to time till disposal of the appeal.
- (iv) The Civil Application stands disposed off.

ORDER ON DELAY APPLICATION :-

- 5. Heard learned Advocates for respective parties.

6. Applicants seek condonation of delay of 167 days caused in filing appeal.

7. Perused application. Reasons as stated, indicates that delay occasioned on account of administrative reasons and the applicants have not derived any advantage by making delay in lodging the appeal. The averments are also not controverted by filing affidavit in reply. Hence case is made out to condone delay. Hence delay of 167 days stands condoned. Appeal be registered subject to removal of all office objections.

ORDER ON STAY APPLICATION :-

8. Mr. Chaudhari learned Advocate for applicant submits that entire amount with interest is deposited with Registry of this Court. Mr. Undre, learned Advocate for respondent do not dispute this position. His submission is fortified by office endorsement. In that view of the matter, Civil Application stands allowed in terms of prayer Clause (B) and stands disposed of.

ORDER IN APPEAL :-

9. On registration of appeal, issue notice to respondents, returnable on 21.03.2025.

10. Mr. Undre, learned Advocate waives service of notice for respondent Nos. 1 to 3.

11. Call for Record and proceedings.

12. Parties are put to notice that appeal may be heard finally at the stage of admission on returnable date.

(S. G. CHAPALGAONKAR)
JUDGE

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