IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 190 OF 2025
IN
FIRST APPEAL NO.624 OF 2022

Shri Suresh Deochand Bhirud
Age 79 years, occ. :Retired
R/at :B2/52, Elite Empire,
Balewadi, Pune 411045 … Applicant
(Org. Applicant)

IN THE MATTER BETWEEN

The New India Assurance Co. Ltd.
Pune Divisional Office-II,
Above Nehru Memorial Hall,
3rd Floor, Camp, Pune 411001 ..Appellant
(Original Opp. Party No.3.)

- :VERSUS:-

1. Shri Suresh Deochand Bhirud
Age: 79 years, Occ.: Retired
No.1 for himself & Respondent No.
being minor through natural guardian
Both R/at: B2/52, Elite Empire,
Balewadi, Pune – 411045 (Original Petitioner)

2. Mr. Mohammad Yakub Shaikh
Age:59 years, Occ.: Driver
R/at: Bldg.no.6, Room no.1-B,
Mhada Colony, Hingane Mala,
Near Suraksha Nagar, Hadapsar,
Pune – 411038 (Original Opp. Party No.1.)

And

580, Anand Nagar, Market Yard,
Pune - 411037.

3. Mr. Salim Shaikh
Deceased through his legal
Representatives (Org. Opp. Praty No.2)

4a) Mr. Rafiq Islam Shaikh
Age Adult, Occ.: Business

R/at: 237, Nade Galli, Ganesh
Peth, Pune – 411011 (Org. Opp. Party No.2a)

4b) Mr. Taslim Islam Shaikh
Age Adult, Occ.: Business
R/at: Mominpura, Chadtara Chowk,
Near Dalal Pan Shop, Pune – 411037 (Org. Opp. Party No.2b)

4. K.K.Travels
Shop no.108, 6th Sense Shopping Centre,
S.No.84/2/2A, and 1B, Pune Satara
Road, Katraj, Pune – 411046 (Org. Opp. Party No.4)

5. Mr. Hajratsab Maulasab Kyalkund
Age: 57 years, Occ.: Driver
R/at: Shivajinagar, Kundkond,
Tal. Mundkol, Dist. Dharwad
Karnataka State (Org. Opp. Party No.5)

6.Mr. Nazeerahmed Mehboobsab Honnyal,
Age Adult, Occ.: Business
Bharat Roadways, Kempkeri Karwar
Road, Hubli, Karnataka
R/at: Vishalnagar, Sadat Colony,
Near Karwar Road, Old Hubli,
Tal. Hubli, Dist. Dharwad
Karnataka State (Org. Opp. Party No.6)

7.Reliance General Insurance Co.Ltd.
570, Rectifier, House,
Naigaum Cross Road, Wadala (West),
Mumbai – 400031 (Org. Opp. Party No.7)
Respondents

Mr. D.D. Shinde a/w Mr. G.P. Shinde for Applicant.
Ms. Karishma Jhaveri i/b Navdeep Vora & Associates for Appellant.
Ms. Kalpana Trivedi for Respondent No.8-Reliance General Insurance Co. Ltd.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

RESERVED ON : 20 MARCH 2025
PRONOUNCED ON : 22 APRIL 2025

ORAL JUDGMENT (Per Advait M. Sethna, J.) :-

1. This interim application is filed by the applicant/original claimant for the following substantive relief :-

> "(a) The applicant may kindly be permitted to withdraw the entire awarded amount deposited by appellant i.e. the Insurance Company along with interest accrued thereon before the Ld. Tribunal."

2. The appellant-The New India Assurance Co. Ltd., has assailed the judgment and award dated 4 February 2021 in Motor Accident Claim Petition No. 1071 of 2009 (**"Impugned Award"** for short) passed by the Motor Accident Claim Tribunal, Pune ("**MACT**" for short).

3. The MACT, Pune, by the impugned award has directed the appellant-The New India Assurance Co. Ltd. to pay a monetary compensation of Rs.6,75,063/- with an interest of 7% p.a. from the date of application till the realization to be paid by appellant jointly and severally.

4. Heard Mr. D.D. Shinde learned counsel for the applicant and Ms. Karishma Jhaveri, learned counsel for the appellant-New India Assurance Co. Ltd. and with their assistance, we have perused the record.

5. Our attention is invited to an earlier order dated 1 July 2022 passed by the learned Single Judge of this Court, where the Court accepted the statement of the appellant that the compensation as per the impugned judgment and award will be deposited within a period of four weeks, subject to which the impugned award of the MACT would be stayed.

6. Mr. Shinde would first submit that on the fateful day of the accident on 22 November 2008 the applicant being the father of the deceased Vikas was seriously injured. He along with the daughter of the said deceased Vikas were the only survivors. The present applicant is a senior citizen of 79 years having no independent source of income. He was dependent mainly on his deceased son for his livelihood. As such accident came as a root shock to the family, the applicant is suddenly place in a situation where is not in a position to even meet his day to day living expenses. The applicant being the father of the deceased-son is required to look after the granddaughter who is the surviving victim besides the applicant.

7. Mr. Shinde would urge that the applicant suffered multiple severe injuries in the nature of head injuries, radial intra articular fracture, fracture of both nasal bones, frontal lobe contusion, neurogenic bladder, urinary tract infection and several other severe injuries as mentioned in the medical documents such as the discharge certificate, among others. The applicant thus suffered 25% permanent disability in respect of which there is a certificate on record.

8. Ms. Karishma Jhaveri, learned counsel for the appellant, insurance company would oppose the interim application. However, there is no written objection or affidavit-in-reply on record. According to her the applicant has not made out any justifiable ground in support of the reliefs claimed in the application. She would submit that the appellant insurance company would be prejudiced if such amount is permitted to be fully withdrawn, with no security to the applicant. She would urge that this is not a fit case to permit the applicant to withdraw the entire amount deposited by the appellant with the MACT.

9. On hearing the submission of the parties and perusal of the record. We find that the applicant who is a senior citizen is in genuine need of financial assistance. This is a case where the entire family of the applicant succumbed to the accident on 22 November 2008. We find that the applicant suffered grave and serious injuries which would not permit him to lead a normal life anymore. At the evening years of his life he also is saddled with the responsibility of taking care of his surviving granddaughter. In such situation the expenses which the applicant would have to incur are unpredictable and unfathomable at this juncture. There cannot be any financial compensation which would bring back the company of the deceased insofar as the applicant is concerned. The loss is irreparable being suffered every minute and every day. Except for the accident this could not have been the destiny or fate of the applicant. Thus, it cannot be disputed that one needs to have sufficient funds given the precarious health condition of the applicant who faces 25% permanent disability as also the surrounding circumstances.

10. We may observe that considering the averments made in the interim application we are not in agreement with the opposition put forth by Ms. Jhaveri to the interim application. The applicant is seeking to withdraw an amount of Rs.5,64,138/- (i.e., after deducting TDS) deposited with the MACT, Pune by the appellant. To address the apprehension of Ms. Jhaveri we may clarify that the permission to withdraw such amount granted to applicant is by no stretch an expression on merits of the rival contentions of the parties to be urged in the appeal. As the operative part of our order below would indicate that withdrawal of such amount by the applicant is subject to him furnishing an undertaking to bring back the amount, in case, the appellant-The New India Assurance Co. succeeds in the appeal, which in such event, would be recovered as arrears of land revenue.

11. In the light of foregoing reasons, the following order would meet the ends of justice.

: O R D E R :

(i) The Registry of the MACT, Pune is directed to permit the applicant to withdraw the amount of about Rs.5,64,138/- as deposited with the Registry of the MACT, Pune, along with the accrued interest within a period of two weeks from the date this order is presented before the Registry of the MACT, Pune, along with the withdrawal application of the applicant.

(ii) The above withdrawal is subject to the undertaking to be furnished by the applicant with the Registry of the MACT, Pune, in the event, the respondent-the New India Assurance Co. Ltd. succeeds in the appeal, the applicant shall bring back the amount as deposited along with interest and which shall be recovered as arrears of land revenue.

(iii) All rights and contentions of the parties in the appeal are expressly kept open.

(iv) Interim Application is disposed of in the above terms.

(v) Parties to act on the authenticated copy of this order.

[ADVAIT M. SETHNA, J.] **[G. S. KULKARNI, J.]**