IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 191 OF 2025
IN
FIRST APPEAL NO. 904 OF 2023

1) Miss Saura Vikas Bhirud
Age: 17 years, Occ.: Education

2) Mrs. Vaishali Suresh Bhirud
(wife of Shri Rupesh Vasudeo
Bhortake)

3) Shri Suresh Deochand Bhirud
Age: 79 years, Occ.: Retired
Applicant No.1 is minor through her
natural guardian her grandfather i.e.
Applicant no.2 Suresh Deochand Bhirud
Both R/at : B2/52, Elite Empire,
Balewadi, Pune 411045 … Applicants

<u>IN THE MATTER BETWEEN</u>

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. Miss Saura Vikas Bhirud
Age: 17 years, Occ.: Education

2. Ms. Vaishali Suresh Bhirud
(Wife of Shri Rupesh Vasudeo Bhortake)

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

4. 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.

5. Mr. Salim Shaikh
Deceased through his legal
Representatives (Org. Opp. Party 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)

6. 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)

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

8.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)

9.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 Applicants.
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 applicants/original claimants for the following substantive relief :-

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

2. The appellant-the New India Assurance Co. Ltd., has assailed the judgment and award dated 6 February 2021 in Motor Accident Claim Petition No. 1078 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.5,05,600/- with an interest of 7% p.a. from the date of application till the realization to be paid by appellant jointly and severally. Further, the said amount is to be paid by the appellant and Respondent No.8-Reliance General Insurance Co. Ltd. in the ratio of 50:50, respectively.

4. Heard Mr. D.D. Shinde learned counsel for the applicants 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 4 July 2022 passed in Interim Application No. 9966 of 2022 by a co-ordinate bench of this Court in the captioned appeal, where the Court directed stay on the impugned judgment/award of MACT subject to the appellant depositing the entire amount with MACT, Pune, within a period of four weeks.

6. Mr. Shinde, would first submit that the applicant no. 1 is the granddaughter of the deceased and applicant no. 3 is the husband of the deceased, who were the dependents having no source of independent income. Whereas, Applicant no. 2 is the married daughter of the deceased who having no source of independent income was residing with her husband i.e., Mr. Rupesh Vasudeo Bhortake. He further submits that the deceased being the wife of applicant no.3 used to reside with applicant no. 3 in Pune. He further submits that the deceased used to earn Rs.10,000/- by conducting embroidery, art work, fashion designing and microwave cooking classes to further support their expenses of their day to day life.

7. Mr. Shinde would submit that applicant no. 3 is a senior citizen of about 79 years of age, having no source of independent income is suddenly placed in a precarious condition during the evening years of his life. Considering the aforementioned circumstances the applicants are in a dire need of finances who suddenly lost their entire family in the said fateful accident. The immediate requirement of finances for the applicants also arises from the fact that applicant no.1 intends to pursue further education in the United States of America ("**USA**") considering the applicant no. 1 being a citizen of the USA by birth.

8. Ms. Karishma Jhaveri, learned counsel appearing for the appellant-The New India Assurance Co. Ltd., would oppose the application. She would refer to the affidavit-in-reply filed by Sourin Saha, the Administrative Officer dated 14 November 2024, in support of her contention.

9. Ms Jhaveri would further deny that the applicants have no independent source of earning and also that, it is difficult for applicant no. 3 to provide proper education to applicant no. 1. According to him, the applicants have not made out any justifiable ground in support of the reliefs claimed in the application. She would further submit that the appellant-insurance company would be prejudiced if such amount is permitted to be fully withdrawn, without security to the applicant. She would thus submit that the interim application of the applicants for withdrawal of the amount ought to be dismissed in the given facts and circumstances.

10. On hearing the submissions of the parties and on perusal of the record, this is a case where the entire family of the applicants died in an unfortunate accident. The applicant no. 3 is the only surviving legal guardian of applicant no. 1 and who at the evening of his life is saddled with the responsibility of looking after the welfare and well-being of his granddaughter-applicant no.1. It cannot be disputed that one needs to have sufficient funds given the precarious health condition of the applicant no. 2 who faces 25% permanent disability as also the surrounding circumstances. There cannot be any financial compensation which would bring back the company of the deceased insofar as the applicants are 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 applicants. In our view, at this stage without opining on the merits of the appeal, the applicants, who are the surviving family members of deceased ought not be deprived of monetary reliefs sought by a family in distress. We find that such reasons are not only sufficient but also genuine for us to pass appropriate orders in the given facts and circumstances. Also, the reply filed by the appellant does not controvert such facts, as stated by the applicants in the interim application, justifying withdrawal of amounts by the applicants.

11. We may observe that considering the averments made in this interim application, we are not in agreement with the opposition put forth by Ms. Jhaveri, to the interim application. The applicants are seeking to withdraw the net amount of Rs.3,87,767/- (i.e., after deducting TDS) being 50% of the decretal amount deposited with MACT, Pune, as stated by the applicants (as per the chart furnished to the Court). Such relief in the interest of justice prompts us and appeals to our conscience to permit withdrawal of the said amount as prayed for by the applicants. Further, withdrawal of such amount 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 applicants is subject to the applicants 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.

12. 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 applicants to withdraw the amount of about Rs.3,87,767/- 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 applicants.

(ii) The above withdrawal is subject to the undertaking to be furnished by the applicants with the Registry of the MACT, Pune, in the event, the respondent-the New India Assurance Co. Ltd. succeeds in the appeal, the applicants 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.]**