

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 192 OF 2025

IN

FIRST APPEAL NO. 903 OF 2023

1) Miss Saura Vikas Bhirud

Age: 17 years, Occ.: Education

2) 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

**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. Miss Saura Vikas Bhirud

Age: 17 years, Occ.: Nil

2. Shri Suresh Deochand Bhirud

Age: 79 years, Occ.: Retired

No.1 for himself & Respondent No.1

Being minor through her natural guardian

Both R/at: B2/52, Elite Empire,

Balewadi, Pune – 411045

(Original Petitioners)

3. 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.

4. Mr. Salim Shaikh  
Deceased through his legal  
Representatives

(Org. Opp. Party No.2)

4a) Mr. Rafiq Islam Shaikh  
Age Adult, Occ.: Business  
Rat: 237, Nade Galli,  
Ganesh Peth, Pune – 411011

(Org. Opp. Party No.2a)

4b) Mr. Taslim Islam Shaikh  
Age Adult, Occ.: Business  
R/at: Mominpura, Chad tara Chowk,  
Near Dalal Pan Shop, Pune – 411037

(Org. Opp. Party No.2b)

5. K.K.Travels  
Shop no.108, 6<sup>th</sup> Sense Shopping Centre,  
S.No.84/2/2A, and 1B, Pune Satara  
Road, Katraj, Pune – 411046

(Org. Opp. Party No.4)

6. Mr. Hajratsab Maulasab Kyalkund  
Age: 57 years, Occ.: Driver  
R/at: Shivajinagar, Kundkond,  
Tal. Mundkol, Dist. Dharwad  
Karnataka State

(Org. Opp. Party No.5)

7.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)

8.Reliance General Insurance Co.Ltd.  
570, Rectifier, House,  
Naigaum Cross Road, Wadala (West),  
Mumbai – 400031

(Org. Opp. Party No.7)  
...Respondents

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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.

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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 5 February 2021 in Motor Accident Claim Petition No. 1072 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.5,00,000/- 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. 9969 of 2022 by a co-ordinate bench of this Court in the captioned appeal, where the court directed stay of the impugned judgment/award of MACT subject to the Appellant depositing entire amount with MACT Pune, within a period of four weeks.

6. Mr. Shinde, would first submit that on the fateful day of the accident i.e., 22 November 2018, the deceased, aged about 1.5 years along with other family members of the Applicants suffered multiple severe injuries and succumbed to his injuries. The Applicant no. 1 being the sister of the deceased and Applicant no.2 being the grandfather of the deceased were the only survivors. He would further submit that deceased Aarav, was born and was residing with Applicant no. 1 and their parents in the United States of America (“USA”). The parents of the deceased were green card holders of the USA. Mr Shinde would further submit that applicant no. 1, sister of the deceased Aarav is currently pursuing her education and applicant no. 2, the grandfather of deceased is a senior citizen of about 78 years of age having no source of independent income. Considering the circumstances of applicant nos. 1 and 2, who suddenly lost their entire family in the said fateful accident, are in dire need of finances to support themselves. The immediate requirement of finances for the applicants also arises from the fact that applicant no. 1 wants to pursue her further education in the USA, where the fees are extremely high.

7. 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.

8. Ms. Karishma Jhaveri, would rely on the affidavit-in-reply to deny that the applicants have no independent source of earning and also that, it is difficult for applicant no. 2 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.

9. On hearing the submissions of the parties and on perusal of the record, we find that this is a case where the entire family of the applicants died in an unfortunate accident. The applicant no. 2 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, a senior citizen about 79 years who faces 25% permanent disability. 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 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. Applicant no. 1 is the elder sister of the deceased, who at the young and tender age, desires to pursue her education, who cannot be deprived of such basic right. At the same time, as she aspires to study abroad where the fees are way more from that in our country. In view thereof, one is required to have sufficient funds with them to take care of the steep educational expenditure, which is indispensable. We find that the applicants have made out a strong case for withdrawal of the amounts, in the given facts and circumstances. The reply filed by the appellant does not controvert such facts, as stated by the applicants in the interim application.

**10.** We are of the view 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.3,82,658/- (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 in such genuine case, 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.

**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 applicants to withdraw the amount of about Rs.3,82,658/- 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.]