

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.9372 OF 2024

IN

FIRST APPEAL (ST.)NO.6611 OF 2024

Pranati Vaibhav Borse & Others

.. Applicants.

Versus

Divisional Manager,
United India Insurance Co. Ltd.,

.. Respondents/
Opponents

In the matter between

Divisional Manager,
United India Insurance Co., Ltd.,

.. Appellant.

versus

Pranati Vaibhav Borse & Others

.. Respondents.

Adv. Pritesh Bohade, for the Applicants.

Adv. Varsha Chavan, for the Respondents/ Original Appellants.

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: JULY 04, 2025

P. C.

1 The above Interim Application has been filed by the Applicants
[the Original Claimants before the Motor Accidents Claims Tribunal ("MACT,

Nashik”)], seeking to withdraw the amount deposited by the Appellant - Insurance Company before the MACT, Nashik.

2 This application was vehemently opposed by the learned Advocate appearing on behalf of the Insurance Company. She submitted that no amount ought to be allowed to be withdrawn, because (a) there was contributory negligence on the part of the deceased for riding his motor cycle in the central lane of the highway when in fact, motor cycles are to be ridden only in the extreme left lane; (b) the deceased was riding his motor cycle without a helmet and which is mandatory, and which is another instance of contributory negligence; (c) the deceased was a teacher in K B H Vidyalaya, Malegaon, and in support of the salary of the deceased, another teacher deposed regarding his salary, and no person from the administration was deposed. Further, the salary slip was a print out and not supported by a certificate under Section 65B of the Indian Evidence Act, 1872; and (d) even the Income Tax Returns filed to support the salary of the deceased was without any certificate under Section 65B of the Act. It is on this basis that the learned Advocate appearing on behalf of the Appellant submitted that the salary of the deceased itself not being proved, the entire compensation awarded by the MACT has put in a doubt. Therefore, no amount should be allowed to be withdrawn by the Applicants.

3 We have heard the learned Counsel for the parties. In the above Appeal, the MACT has passed an order holding in favour of the Applicants and directing the Insurance Company to pay a sum of Rs. 94,96,280/- (inclusive of NFL amount, if any) within two months from the date of the award. The Insurance Company was also directed to pay interest at 6% p.a. on the above compensation amount from the date of filing of the claim Petition till its actual realization. Being aggrieved by this order of the MACT, this Appeal is filed.

4 When this Appeal came up before this Court on 1st April, 2024, notice was issued to the Respondents and the execution of the impugned award was stayed subject to the Insurance Company depositing an amount of Rs.75 lakhs with the MACT, Nashik within a period of six weeks from 1st April, 2024. Pursuant to this direction, the amount of Rs.75 lakhs has been deposited by the Insurance Company before the MACT, Nashik.

5 As far as the arguments with reference to the merits of the Appeal are concerned, we are of the view that even assuming for the sake of argument that there was any contributory negligence on the part of the deceased, that would not dis-entitle the Applicants from receiving compensation. If at all the compensation would be reduced. As far as non-production of the certificate under Section 65B of the Evidence Act, 1872 is

concerned, we enquired from the learned Advocate appearing on behalf of the Appellant/Insurance Company, whether this objection was ever taken before the MACT, Nashik at the time when the relevant documents was sought to be exhibited. She very fairly stated that she is not in a position to inform the Court as to whether such objection was taken at the relevant time or otherwise.

6 Considering all the facts and circumstances of the case, and also considering that the Insurance Company was not asked to deposit the entire decretal amount [to obtain a stay of the impugned judgment and decree of the MACT], we are of the view that interest of justice would be served if the Applicants herein (the Original Claimant) are permitted to withdraw the amount of Rs.75 lakhs deposited before the MACT, Nashik on Applicants executing a joint undertaking that in the event the Insurance Company succeeds in the above Appeal, they will bring back the said amount or any part thereof, as this Court may direct, together with interest, as such rate this Court may decide at the final hearing of the Appeal.

7 We have, in the peculiar facts of this case, allowed the Applicants to withdraw the entire amount deposited, because the order dated 1st April, 2024 does not direct the Insurance Company to deposit the entire decretal amount with interest, but only the amount of Rs.75 lakhs.

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

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.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]