

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 13841 OF 2024.

IN

FIRST APPEAL NO. 1518 OF 2024.

Dhaval Subodh Parekh and Another ...Applicants.

In the matter of:

Pavan Hans Limited ...Appellant

Versus

Dhaval Subodh Parekh and Another ...Respondents.

Mr. Sandeep V. Mahadik for Appellant.

Mr. Abhijeet Marathe for Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : 12th February, 2025.

P. C. :

1. The present Application has been preferred seeking permission to withdraw the entire amount, which has been deposited by the Appellant along with accrued interest pursuant to the orders passed by this Court.
2. The First Appeal arises out of impugned judgment dated 8th November, 2017 passed in suit, which was initially filed in the High Court in the year 1990 and thereafter, transferred in City Civil Court, seeking damages and compensation for the loss sustained on account

of demise of their parents due to helicopter crash at Sanjichat Vaishnodevi on 14th July, 1988.

3. By the impugned judgment, the Trial Court partly decreed the suit awarding Rs. 19,02,474/- as compensation along with interest. The present First Appeal has been preferred by Defendant No. 1 in the said suit, and Cross Objection has been filed by Claimants seeking enhancement of compensation.

4. The First Appeal has already been admitted and today, the issue is whether the Applicant should be permitted to withdraw the amount, which has been deposited.

5. Learned counsel appearing for Applicant-original Respondents would submit that though the statutory provision limits the compensation of a particular amount, by notification of 30th March, 1973 issued by Ministry of Tourism and Civil Aviation, the limits of liability specified in Rule 22 of the Carriage by Air Act, 1972 is not applicable if it is proved that the damage resulted from an act or omission of the carrier. Pointing out to findings of the Trial Court, he would submit that the additional issue as regards the willful misconduct on the part of Defendant No.1 carrying helicopter on 14th July, 1988 was framed, and which has been answered in affirmative by the Trial Court. He has taken this Court in detail to the findings of the Trial Court clearly holding that there was negligence on the part of

Defendant No. 1. He submits that in view thereof, the limits of liability will not apply and Applicant should be permitted to withdraw the amount deposited.

6. *Per contra* learned counsel appearing for the Original Appellant would submit that he has no objection to withdrawal of 50% of amount.

7. Upon perusal of findings of the Trial Court, the Trial Court has based its finding of negligence on the part of Defendant No. 1 and the report of Inspector of Accident, which has given the cause of accident that flight crew continued a VFR flight into cloudy environment existing over the helipad and adjoining valley, thereby losing visual contact with the ground resulting in the helicopter colliding with the hill slope. The Accident report concluded that non-availability of weather at Sanjichat is a contributory factor to the accident and one of the findings is that the flight crew did not take fresh route forecast, which is in violation of Directorate General of Civil Aviation instructions as contained in Permission Letter dated 12th November, 1987.

8. *Prima facie*, it appears from the Accident report as well as the evidence of one Lieutenant Colonel Ashok Purandare, who had deposed as regards the accidents in aviation, that there is negligence on the part of Defendant No. 1 and the Claimants would therefore, be entitled to compensation.

9. Today, *prima facie*, the findings of the Trial Court are sustainable. As such, the limits of liability specified in Rule 22 will not apply as it is finding of the Trial Court that damage has resulted by reason of an omission or action on part of the carrier. The suit is of the year 1990 and the First Appeal will take some time for final disposal. Till that time, the Claimants, who are decree-holders cannot be deprived of the fruits of the decree. The learned counsel for Respondent-Appellant has no objection to withdrawal of 50% of the amount. Though the Application has been filed seeking withdrawal of the entire amount, in my view, in the interest of justice, the Applicants can be permitted to withdraw 50% of the entire deposited amount without furnishing any security.
10. In event if any clarification is sought, liberty to mention.
11. Interim Application stands allowed in the above terms.

[Sharmila U. Deshmukh, J.]