IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 4091 OF 2025
IN
FIRST APPEAL NO. 643 OF 2025

1. Mrs. Soni Nilesh Kapadia

(Since deceased through her legal heirs)

Nilesh Hiralal Kapadia and Ors.

2. Nilesh Hiralal Kapadia

3. Mr. Dhruv Nilesh Kapadia ...Applicants/Orig. Claimants

In the matter between

Reliance General Insurance Co. Ltd. … Appellant

Versus

1. Mrs. Mrs. Soni Nilesh Kapadia

(Since deceased through her legal heirs)

2. Nilesh Hiralal Kapadia

3. Mr. Dhruv Nilesh Kapadia

4. Mr. Sanjay Singh Jaswant Singh Chauhan … Respondents

Mr. Bharat Gadhavi a/w Ms. Trusha Shah a/w Mr. Sarvesh Deshpande a/w Mr. Pratik Sabrad a/w Mr. Vinayak Shelar a/w Ms. Mansi Dande i/b Bharat Gadhavi, for Applicant.
Mr. Avesh Ghadge i/b Mr. Akshay Kulkarni, for the Respondent.

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

DATE : 17 APRIL 2025

JUDGMENT PER (Advait M. Sethna) .:-

1. This interim application is filed by the applicants (original claimants) for the

following substantive relief, which reads thus:-

> *"a. The Applicants/Orig. Claimants may kindly be allowed to withdraw the entire deposited amount of Rs. 1,52,24,641/- by the Appellant before this Hon'ble High Court."*

2. The applicants (original claimants) are family members of the deceased. The applicant no. 2 is the husband and applicant no. 3 is the son of the deceased who succumbed to injuries in the motor accident which took place on 30 May 2015. The applicants lodged an FIR bearing Crime No. 55/2015 in Dalhousie Police Station, District. Chamba, Himachal Pradesh, pursuant to such accident, which was registered against the driver of the offending vehicle.

3. We have heard Mr. Bharat Gadhavi, learned counsel for the applicants and Mr. Avesh Ghadge, learned counsel for the respondents/appellant-insurance company. With their assistance we have perused the record. The interim application is filed in the first appeal of the appellant-insurance company assailing the judgment and award dated 23 November 2023 passed by the Motor Accident Claim Tribunal, Mumbai ("**MACT**") in MACP No. 234 of 2017 ("**Impugned Judgment**"). By the impugned judgment and award the appellant-insurance company was directed to pay, jointly and severally a compensation of Rs.1,03,20,000/- (Rupees One Crore Three Lakhs Twenty Thousand only) to the applicants. The operative part of the impugned judgment and award reads thus :-

"__ORDER__

1) The claim-application is partly allowed with proportionate costs.

2) The opposite party and insurer shall pay jointly and severally, compensation of Rs.1,03,20,000/- (Rupees One Crore Three Lakhs Twenty Thousand only) to the *claimants, inclusive of compensation amount granted u/Sec. 140 of Motor Vehicles Act, on the basis of No Fault Liability, within 30 days from the date of this order.*

3) The opposite party and insurer shall pay jointly and severally interest @7.5% p.a. on the amount of compensation to the claimants, from the date of registration of claim- till realization of said amount.

4) The opposite party and the insurer shall jointly and severally deposit the compensation amount by NEFT/RTGS in the Savings Account in the State Bank of India, Empire House Branch, Fort, Mumbai. The accounts details are as under:

Account Name: Motor Accident Claims Tribunal, Mumbai
Account No. : 00000040777482356.
IFS Code : SBIN0030002.
MICR Code : 400002273.

5) Out of the total compensation amount, 60% amount be paid to the claimant No.1 and 40% be paid to the claimant No.2.

6) Out of the share of claimant Nos.1 and 2, Rs.10,00,000/- each *be invested in their respective names in any Nationalized Bank for a period of 5 years and remaining amount be paid to them through NEFT/RTGS.*

7) After maturity period, the invested amount with accrued interest be directly credited to the bank account of the claimants or it be dealt with as per the direction of the claimants without reference to this Tribunal.

8) The Account Officer shall inform the bank to submit a copy of FDR and the intimation of release of such amount after maturity to this Tribunal.

9) The Accounts Officer shall transfer the compensation amount in the bank account of the claimants, by NEFT/RTGS on due verification and as per rules, after furnishing necessary details by claimants as follows -

a) Name and address of the claimants,

b) Name of Bank and Branch of claimants,

c) Bank Account Number,

d) Bank IFSC code,

e) Copy of first page of bank passbook containing photograph of the claimants duly attested by the concerned bank,

f) Self attested copies of Aadhar card and PAN card.

10) All interim applications filed in this claim-application stands disposed off.

11) The claimants shall deposit deficit court fees if any, within a period of 8 days from the date of this order.

12) Award be drawn accordingly."

4. Mr. Gadhavi, learned counsel for the applicants in support of the interim application would press for withdrawal of the entire amount with interest as deposited by the appellant – insurance company with the MACT. He would refer to an order passed by a coordinate bench of this Court dated 12 December 2024, by which the appellant – insurance company was directed to deposit the entire decretal amount of Rs.1,03,20,000/- with interest at 7.5% p.a. from the date of registration of the claim petition filed before the MACT, until the date of such deposit. On such condition, the Court stayed the impugned judgment and award passed by the MACT, Mumbai. The applicants (original claimants) through this interim application, are seeking the withdraw of the entire amount of Rs.1,03,20,000/- along with proportionate accrued interest at 7.5% p.a. which is approximately Rs.1,52,24,641/- deposited with the MACT by the appellant – insurance company.

5. Mr. Gadhavi would urge that the appellant- insurance company has failed to prove their case before the MACT. No statutory defence whatsoever was raised by the appellant. The applicants had duly examined the Chartered Accountant of the claimant who filed the returns of the applicants as also the nurse who looked after the deceased from 15 September 2015 to 31 March 2018, to prove their claim before the MACT. He would submit that there is no evidence to the contrary led by the appellant–insurance company and thus the claim of the applicants stood proved before the MACT.

6. Mr. Gadhavi would then urge that the deceased had sustained severe injuries namely chronic respiratory failure, concussion and oedema of cervical spinal cord,

urinary tract infection, complex cervical spinal cord injury. She was unable to move her lower and upper limbs and was diagnosed with flaccid quadriplegia and other grave, serious injuries to which she ultimately succumbed. Faced with such serious injuries the deceased had to undergone rigorous medical treatments and for such treatment which lasted for a period of about five years the medical expenses were quantified at Rs. 1,00,00,000/- (Rupees One Crore). This caused a huge financial drain on the resources of the surviving applicants. The MACT had in its impugned judgment and award carefully perused the income tax returns of the applicants which were placed on record for the assessment years 2016-17 which was Rs.5,38,07,1/- to the assessment years 2010-11 which was Rs. 5,99,855/-. The maximum income of the applicants as submitted before the MACT was Rs. 9,69,215/- p.a which according to the applicants was duly proved by leading evidence of the chartered accountant. There is nothing contrary placed on record by the appellant-insurance company to disprove these aspects.

7. Mr. Gadhavi would urge that the applicant no. 2 being the husband of the deceased had to incur huge financial liability and in fact had to borrow large amounts to defray the medical expenses of the deceased. The applicant no. 2 had also borrowed money from friend and relatives to provide such medical treatment to the deceased which went on for about five years, as a result of which the entire business of the applicant no. 2 came to a virtual stand still. The applicant no. 3 being the son of the deceased has been perusing higher studies and is in dire need of finances to support the educational requirements, particularly expenses towards

professional courses for which the applicants are burdened with student loan to support such expenses for applicant no. 2. The applicants are finding it extremely difficult and reeling under stress to even manage their day to day expenses, essential for a living.

8. Mr. Ghadge would oppose the interim application. He would rely on the affidavit in reply filed on behalf of the appellant-insurance company of Mr. Rohit Prasad, legal manager of the appellant dated 2 April 2025. He would first submit that the applicants have failed to prove the medical expenses as claimed by them before the MACT. In this context he would submit that the MACT gravely erred in awarding Rs. 10,20,000/- as attendance charges to the attendant nurse of the deceased as there was no evidence in this regard lead by the applicants to prove their claim.

9. Mr. Ghadge would dispute the disability of 100% of the deceased as the applicants failed to prove this before the MACT. According to the appellant, merely relying on the certificate issued by the Doctor was not enough in reaching a conclusion on such disability. The MACT has seriously erred in not appreciating and overlooking this vital aspect. The MACT further erred in not considering even after such disability she was earning handsome income and there was no loss of income as alleged by the claimants.

10. Mr. Ghadge would urge that if the prayer of the applicants in the Interim application is allowed the appellant apprehends that such amount as withdrawn would never come back to the grave prejudice of the appellant-insurance company.

He would therefore urge that the prayer for withdrawal of the entire amount ought not to be granted in the facts and circumstances in the present case.

11. On consideration of the above, we may observe that the applicants have made out a sufficient case for withdrawal of the amounts as set out in the interim application. It is apparent that pursuant to the accident the deceased had suffered extremely serious and life threatening disability which made her completely dependent on applicant nos. 2 and 3. In light of the serious injuries, she suffered including her diagnosis of flaccid quadriplegia it cannot be disputed that huge medical expenses would have been incurred for her treatment which went on for about five years. We see no reason at this *prima facie* stage to disbelieve the medical condition of the deceased as also the expenses that would have been incurred by the surviving applicants in the peculiar facts and circumstances including the expenses for medical treatment and medical charges of the attendant. The deceased/victim, though being an engineer earning substantial amount per month the fateful accident completely deprived her and her family of the income of about Rs. 75,000/- per month which was her earning capacity. In this view of the matter, the applicant nos. 2 and 3 were faced with huge financial crisis before them as such incidents like the accident in the present case are not planned, or designed but rather come as a rude shock and a colossal blow to the family which is completely unforeseen and unpredictable. Considering the fact that the applicant no. 3 is pursing her education, it would follow that higher studies in today's contemporary times would incur huge expenditure particularly when one engaged is in

professional courses. These are the need of the hour and one cannot compromise on such basic needs of life. It is to meet such huge monetary liability of the deceased and to also meet the day to day expenses that the applicants would be in urgent need of finances. We may observe that though the appellant-insurance company has filed a reply affidavit, these issues in particular as raised by the applicants have not been disputed and or controverted by the appellant-insurance company in its reply affidavit.

12. We may also observe that the MACT has in the impugned judgment considered the income of the applicants on the basis of income tax returns which was claimed to be proved by the applicants. As claimed by them the maximum income of the applicants would not exceed Rs.9,69,215/- p.a which is hardly enough to maintain even a basic standard of living in today's day and age. This is also not controverted in the affidavit in reply to the interim application. We may observe that the apprehension of the appellant-insurance company to the effect that the amounts once withdrawn by the applicants would never come back would be addressed adequately in our order below.

13. For the reasons as noted above, we are inclined to grant a partial withdrawal to the extent of 75 % to the applicants. Such relief would serve the interest of justice as would appeal to our conscience. Needless to mention that withdrawal of such amount is by no stretch and expression on merits of the rival contentions of the parties to be urged in the appeal. We, therefore pass the following order.

ORDER

(i) The Registry of this Court is directed to remit the amount deposited with it by the appellant to the MACT within period of one week from today. The Registry of MACT, Mumbai is directed to permit the applicants to withdraw the 75% of Rs.1,03,20,000/- i.e., Rs.77,40,000/- (Rs. Seventy-Seven Lakhs Forty Thousand only) as deposited by the appellant-insurance company along with the proportionate accrued interest on such amount, within a period of two weeks thereafter along with the withdrawal application of the applicant.

(ii) The above withdrawal is subject to the undertaking to be furnished by the applicants with the Registry of MACT, Mumbai to the effect that in the event the appellant-insurance company succeeds in the appeal, the applicants shall bring back the amount as deposited along with interest 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 authenticated copy of this order.

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