IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.971 OF 2015
IN
FIRST APPEAL NO.1391 OF 2014

Vitthal Tukaram Ganjave & Ors. .. Applicants

In the matter betwee;

The New India Assurance Co. Ltd. .. Appellant
-*Versus*-
Vithal Tukaram Ganjave & Ors. .. Respondents

Mr.Mahesh Rawool i/b. K.P.Shah for applicants
Mr.D.R.Mahadik for respondent No.1.

CORAM : K.K.TATED, J.

DATE : 20th March 2015.

P.C.

1] Heard the learned Counsel for the parties. This application is preferred by the claimants for withdrawal of amount deposited by the respondent – original appellant (Insurance company).

2] Learned Counsel for the applicants submits that in an accident which took place on 1st January 2008, the deceased Vishal Ganjave died. He submits that the applicant Nos. 1 and 2 are his parents and applicant No.3 is his sister. He submits that on the date of accident the deceased was 28 years old. He was earning Rs.7000/- per month as he was employed as Sales Manager at Friends Electronics, Nerul, Navi Mumbai. It is further submitted that the applicants had filed claim Petition under section 166 of Motor Vehicles Act, claiming compensation of Rs.5 lakhs. He submits that the Tribunal considered the evidence on record, awarded Rs.3.60 lakhs with 7 % interest.

3] Learned Counsel for the applicants submits that the applicant No.1 is senior citizen and applicant No.2 is house wife and applicant No.3 Kumari Deepali is sister of deceased, who is of marriageable age. He submits that the applicant No.1 gets pension of Rs.10000/- per month. Applicant No.2 does not have any source of income. It is very difficult to survive in monthly pension of Rs.10,000/-. Hence, this court be pleased to allow the application to withdraw the amount deposited by the Insurance Company (appellants). He further submits that if the applicants are not allowed to withdraw the amount deposited, irreparable loss will be caused to them.

4] On the other hand the learned Counsel for the respondents-original appellants submits that the Tribunal erred in coming to the conclusion that the insurance company is liable to pay compensation. He submits that the rider of the offending vehicle was not holding valid licence at the time of accident. He submits that these facts are not considered by the Tribunal at the time of awarding compensation. He submits that the Tribunal has awarded compensation on higher side. Hence, there is no question of allowing the applicants to withdraw the amount. He submits that if this court allows the applicants to withdraw the amount, the applicants be directed to furnish solvent security for the same.

5] I have heard the parties at length. The applicant Nos. 1 and 2 have lost their son aged 28 years. At that time he was earning Rs.7000/- per month. Applicant No.3 is his sister and of marriageable age. Considering the fact that the appellant No.1 is getting Rs.10,000/- as pension and applicant No.2 is house wife, I am of the opinion that the applicants are entitled to withdraw the amount. Hence, following order:-

(a) Applicant Nos. 1 and 2 are entitled to withdraw 25% each of the amount deposited by the appellants without furnishing security;

(b) Applicant Nos. 1 and 2 are allowed to withdraw further 25% each of the amount deposited on furnishing security to the satisfaction of the trial court within twelve weeks from today;

(c) Application is disposed of.

(K.K.TATED, J.)