IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

CIVIL APPLICATION NO.4383 OF 2014
IN
FIRST APPEAL NO.1666 OF 2012

Smt. Anjali Narendra Desai & Ors. ...Applicants

V/s.

New India Assurance Co. Ltd. ...Respondent

Mr. S. R. Singh i/b. S. R. Singh & Co. for the Applicant.
Mr. Milind V. More for Respondent No.1.

CORAM: K.K. TATED, J.
DATED : FEBRUARY 4, 2015

P.C. :

1. Heard the learned counsel for the parties. This Application is preferred by the original claimants for withdrawal of the amount deposited by the Appellant Insurance Co. pursuant to the order passed by this court, in the Tribunal.

2. The learned counsel for the Applicant submits that in an accident which occurred on 20/03/2006, the Applicant No.1 lost her husband and, Applicant Nos.2 and 3 their father. The learned counsel for the Applicant submits that at the time of accident, the deceased Narendra was of 48 years. He was in service with Pay & Accounts Office, Government of Maharashtra, Bandra Mumbai and getting monthly salary of Rs.12,857/-. He submits that considering this fact, the

Tribunal awarded compensation of Rs.14,73,400/- with 7.5% interest. The learned counsel for the Applicant submits that her both children are taking education. Paragraph 4 of the Civil Application reads thus:

> *"4. The Petitioner herein submits that the daughter of deceased Applicant No.2 Ms. Manasi Desai has just completed post graduation in physiotherapy and she was dependent on deceased and Respondent No.3 Ms. Rajsi Desai who was studying final year of Engineering (Electronic and Telecommunication) and her educational expenses was around Rs.85,000/- p.a. and her education alone costs more than Rs.1,00,000/-p.a. The Applicant No.1 widow of the deceased was also suffering from osteo arthritis for past ten years and condition of knee joint had deteriorated to an extent her mobility was largely affected. She underwent total knee replacement for both knees in January 2012 and another in July 2012 and she incurred hospitalization and medical expenses to the tune of Rs.3,00,000/- per knee. Due to these medical expenses resulted in stress of financial condition. All this resulted into mental and physical stress to the Petitioner. The Applicant say and submit that due to death of deceased, the Applicants require money badly for medical expenses of Applicant No.1 and educational expenses for Applicant No.2 and 3. It is therefore that this Hon'ble Court may please allow to withdraw amount deposited by the Insurer. The Applicant say and submit that the Insurer/Org. Appellant deposited Rs.21,26,203/- on 11/01/2013 as per order dated 18/12/2012 passed by Hon'ble Lordship Shri Shrihari P. Davare."*

3. On the basis of this submission, the learned counsel for the Applicant submits that this Hon'ble Court be pleased to allow the Applicant to withdraw the amount deposited by the Appellant Insurance Co. He submits that, it is very difficult for Applicant No.1 to bear the day-to-day expenses of both the children. He submits that, if Civil Application is not allowed, irreparable loss and injury will be caused to the Applicant.

4. On the other hand, the learned counsel for the Appellant Insurance Co. vehemently opposed the Civil Application. They filed the Affidavit-in-Reply dated 27/01/2015. Same is taken on record.

5. The learned counsel for the Appellant submits that the Applicants are not dependent only on the compensation awarded by the Tribunal. He submits that the Applicants are getting family pension from the Government. He further submits that if the entire amount is withdrawn by the Applicant, nothing will survive in the appeal. He further submits if they succeed before this court in the present proceedings, then it will be difficult for them to recover the entire amount from the Applicant. He further submits if this court allows the Applicant to withdraw any amount, then they must provide a solvent security and/or bank guarantee to the satisfaction of the Tribunal.

6. It is to be noted that in the present proceedings, the Applicant No.1 lost her husband who was in service with Pay & Accounts Office, Government of Maharashtra, Bandra Mumbai and was getting monthly salary of Rs.12,857/-. At the time of accident, the deceased Narendra was of 48 years. The learned counsel for the Applicant submits that Applicant Nos.2 and 3 are taking education. The Applicant No.1 is house wife. In other words, she has to maintain Applicant Nos.2 and 3 and also bear the education expenses.

7. Considering the submissions made by the learned counsel for the Applicant and the averments made in paragraph 4 of the Application, I am satisfied that the Applicant has made out a case for allowing the

Applicant to withdraw some amount during pendency of the Civil Application.

8. Hence, the following order:

A) Civil Application is allowed in the following terms:

a) The Applicant No.1 Anjali Narendra Desai is entitled to withdraw 30% of the deposited amount by the Appellant Insurance Co., without furnishing any security.

b) The Tribunal is directed to invest the 40% of the deposited amount in the name of Applicant No.1 - Anjali Narendra Desai in a fixed deposit account of any Nationalized bank, initially for a period of three years which will be renewed from time to time till hearing and final disposal of the appeal.

c) The Tribunal is directed to invest the remaining 30% amount in the name of Applicant No.2 – Ms. Manasi Narendra Desai and No. 3 – Ms. Rajsi Narendra Desai, 15% each in a fixed deposit account of any Nationalized bank, initially for a period of three years which will be renewed from time to time till hearing and final disposal of the appeal.

d) The Applicants are entitled to withdraw the quarterly interest on the said fixed deposit account, without furnishing any security.

e) Liberty granted to the Applicant to make an appropriate Applicant for withdrawal of further amount in case of exigencies.

f) Civil Application stands disposed off accordingly.

(**K.K. TATED, J.**)