

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

CIVIL APPLICATION NO. 860 OF 2016
IN
FIRST APPEAL NO. 967 OF 2016

Smt. Suman Tukaram Pangavane & Anr. .. Applicants

In the matter between

National Insurance Co. Ltd. .. Appellant

Vs.

Smt. Suman Tukaram Pangavane & Anr. .. Respondents

Mr. Nikhil Mehta i/b KMC Legal Venture for the Applicants.

Mr. Bhushan U. Deshmukh for Respondent Nos.1 & 2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st OCTOBER, 2016.

P. C. :

1. This is an application preferred by the original claimants seeking withdrawal of the amount of compensation as deposited by the respondent-Insurance Company with the Tribunal. It is submitted that applicant No.1 is the widow and applicant No.2 is the father of the deceased, who succumbed in the fatal accident on 29.10.2010. The applicants are having no source of income and it is submitted that they be permitted to withdraw the entire decretal amount along with interest.

2. Learned counsel for the respondent-Insurance Company however pointed out the defence raised by the Insurance Company before

the Tribunal was that the deceased was not having valid license for driving the heavy motor vehicles. The license, which he was having, was only for driving light motor vehicles. It is submitted that the Trial Court has referred to the Judgment in the case of **S. Iyyapan Vs. M/s. United India Insurance Co. Ltd. in Civil Appeal No. 4834 of 2013** but the said Judgment is already referred to the larger bench. Moreover, the Trial Court has also in its operative order directed that the Insurance Company may recover the compensation amount from the owner of the vehicle. Hence, it is urged that, if the applicants withdraw the entire amount of compensation, it would be difficult for the Insurance company to recover the same.

3. In view thereof, having regard to the needs of the applicants and the defence raised by the Insurance Company, which needs to be tested in this appeal, the applicants are permitted to withdraw only the amount of Rs.2,00,000/-, subject to furnishing of usual undertaking, without insisting on any security.

4. The Civil Application is, accordingly, disposed of.

[DR. SHALINI PHANSALKAR-JOSHI, J.]