

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3855 OF 2016
IN
FIRST APPEAL (STAMP) NO.34527 OF 2015

Asiya Tajjamul Kaldane & Ors.	 Applicants
<i>In the matter between</i>	
The New India Assurance Co. Ltd.,	
Alibag- Raigad	 Appellant
<i>V/s.</i>	
Asiya Tajjamul Kaldane & Ors.	 Respondents

Mr. T.J. Mendon for the Applicants-Original Respondents.

Mr. Himanshu B. Takke, i/by Mr. M.V. More, for the Respondent-Original Appellant.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 1ST SEPTEMBER 2016.

P.C. :

1. Heard learned counsel for the parties.

2. This Civil Application is preferred by the original claimants seeking withdrawal of the amount of compensation, as deposited by the appellant-Insurance Company in the M.A.C.T., Mangaon, Dist. Raigad in M.A.C.P. No.137 of 2009. The total amount deposited in the Tribunal by the appellant-Insurance Company is Rs.71,68,044/-.

3. It is submitted by learned counsel for the applicants that, applicant No.1 is widow, applicant Nos.2 and 3 are the minor children and applicant No.4 is the mother of the Deceased. On account of death of the Deceased, on whom the applicants were depending, the applicants are not having any source of income and for their maintenance and education of the minor children, some amount is required.

4. Learned counsel for the appellant-Insurance Company submits that the appeal is preferred challenging the finding of the Tribunal on the count that it was a case of contributory negligence and, secondly, even the issue relating to the correct assessment of quantum of compensation amount is also raised. It is submitted that the Tribunal has assessed the compensation on higher side and, therefore, at this stage, applicants may not be permitted to withdraw the entire compensation amount deposited in the Tribunal.

5. Considering the submissions advanced by learned counsel for the applicants and appellant-Insurance Company in this Civil Application and having regard to the need of the applicants, though the amount given to the share of applicant Nos.2 and 3, being the minors, cannot be allowed to be withdrawn, so far as applicant No.1-the widow and applicant No.4-

the mother of the Deceased is concerned, some amount needs to be permitted to be withdrawn for satisfying their requirements.

6. Having regard to the amount deposited in the Tribunal, applicant No.1 is permitted to withdraw a sum of Rs.10,00,000/-, whereas, applicant No.4 is permitted to withdraw a sum of Rs.3,00,000/-, without furnishing any security, but subject to furnishing usual undertaking.

7. The amount of Rs.25,000/- deposited in this Court by the appellant-Insurance Company is directed to be transferred to the M.A.C.T., Mangaon, Dist. Raigad in M.A.C.P. No.137 of 2009. The M.A.C.T., Mangaon, Dist. Raigad, is directed to invest the said amount in any Nationalized Bank, initially for a period of one year, to be renewed from time to time, till disposal of the First Appeal.

8. The Civil Application is disposed of in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]