

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2416 OF 2013
IN
FIRST APPEAL NO.1064 OF 2013

Smt. Rijwanabano Shaik Rafique
and others

.... Applicants

V/s.

The New India Assurance Co.
Ltd. and others

.... Respondents

Mr. Sachin Gite, for the applicants.

Mr. Devendranath S. Joshi, for the Respondent No.1.

Mr. A.R. Kapadnis, for respondent No.5

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH AUGUST, 2016.

P.C. :

1. This application is preferred by the original claimants seeking withdrawal of the amount of compensation which is already deposited by the Insurance Company i.e. respondent No.1. It is submitted that the applicant No.1 is the widow; whereas applicant Nos. 2 & 3 are the minor children of the deceased. Applicant No.4 is the old mother of the deceased. They are in urgent need of some amount for their maintenance especially for the education of applicant Nos. 2 and 3. It is submitted that

deceased was the only earning member of their family and after his death, they are not having any amount for their maintenance.

2. It is a matter of record that the respondent No.1 the Insurance Company has already deposited an amount of Rs.5,38,665/- in the Court towards compensation payable to the applicants in pursuance of the order, passed by the trial Court.

3. The only submission advanced by learned counsel for respondent No.1 is that the legal issue involved in the instant case is already referred by the Hon'ble Supreme Court to the Larger Bench, even then respondent No.1 is ready to go on with the final hearing. The learned counsel for respondent No. 2 is also ready for final hearing. It is submitted that the record and proceeding is also received.

4. In view thereof, the appeal is kept for final hearing. However, at the same time, as hearing will take some time, in the meant time, it is necessary to grant some amount of compensation to the applicants for their maintenance of bare necessities and especially for education of applicant Nos 2 & 3.

5. Though the submission is advanced by the learned counsel appearing for respondent No.1 that as the liability is joint and several of respondent Nos 1 & 2, applicants may recover the said amount from respondent No.2, needless to state that it is the Insurance Company which has to indemnify respondent No.2 and when the liability of

respondent No.2 is yet to be finally decided and the amount has already been deposited by respondent No.1 in the Court, at this stage keeping that question open, it would be just and proper to allow the applicants to withdraw at least some amount for their maintenance and education of applicant Nos. 2 & 3 subject to certain conditions. Hence the following order.

Order

- I) Application is allowed partly.
- II) Applicants are allowed to withdraw 30% of the amount deposited in the Court by respondent No.1 subject to furnishing security to the satisfaction of the trial Court, within six weeks.
- III) In view of this order, Civil Application No.2692 of 2012 filed by respondent No.1 for stay also stands disposed of in above terms.
- IV) First Appeal be listed for final hearing 13.09.2016.

[DR. SHALINI PHANSALKAR-JOSHI, J.]