

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

938 CIVIL APPLICATION NO. 12825 OF 2017
IN FAST/14245/2016 WITH CA/8026/2016 IN FAST/14245/2016 WITH
CA/8027/2016 IN FAST/14245/2016

GANESH SHRIRAM INGLE AND ORS
VERSUS
BRANCH MANAGER, THE NATIONAL INSURANCE CO. LTD., JALGAON AND ANR

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Advocate for Applicants : Mr. Vishnu B. Madan (v.p.not Filed)
Adv. for Respondent No. 1 : Mr. S.N. Pagare

CORAM : K.K. SONAWANE, J.

DATE : 11th October, 2017.

PER COURT:

1] Heard learned counsel for the applicant and learned counsel for the respective National Insurance Company. Despite service of notice, none appears for respondent No.2.

2] The learned counsel for the applicant submits that the respondent Insurance Company has already deposited Rs. 5,21,375/- in this court, towards compensation payable to the claimant as per the award passed by the learned Tribunal. The respective Insurance company has filed appeal on the issue of breach of condition of the policy. It has been alleged that the cleaner of the concerned truck was driving the vehicle at the relevant time and, therefore, the accident was caused. He contends that in view of pay and recover policy, in case of success of the appellant Insurance company in the appeal, the monetary liability will be shifted on the owner of the offending vehicle. Therefore, he prayed to allow the application for withdrawal of entire compensation amount.

3] The learned counsel for the Insurance company raised the

objection and submits that in case the entire compensation amount is allowed to be withdrawn, it would create complications and hurdles for the insurance company to recover the same in future. He, therefore, prayed to reject the application.

4] Perused the application. In view of submission about breach of policy, as alleged by the respondent, I do not find any impediment to allow the applicants to withdraw the amount to some extent in the interest of justice. It would not cause any prejudice to respondent insurance company. Hence, the applicants are allowed to withdraw the amount of Rs. 1 Lakh each (total sum of Rs.4 Lakhs) from the amount deposited in this court on behalf of appellant insurance company, subject to condition that the applicant Nos. 1 to 3 shall furnish an undertaking to the satisfaction of the Registrar (Judicial) of this Court, to the effect that in case adverse situation arises after adjudication of the appeal on merit, in favour of appellant insurance company, the applicants will refund the amount forthwith as per the directions of this Court. As the applicant No.4 is a minor, his share of Rs. 1 Lakh be kept in the Fixed Deposit Account of any nationalized bank till further orders. Rest of the amount deposited on behalf of insurance company be invested in any nationalized bank for a period of two years or till adjudication of appeal on merit. Registry to do the needful for disbursement of amount as referred supra, in favour of the applicant Nos. 1 to 3, as per rules. Application for withdrawal of amount stands disposed of accordingly.

[K.K. SONAWANE]
JUDGE.

grt/-