

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 3659 OF 2018
IN
FIRST APPEAL NO. 5142 OF 2017

Jamrutbi w/o Nawaz Pathan and others .. Applicants

versus

Sachin J. Khandare and others .. Respondents

Mr. S. D. Taushikar, Advocate, holding for Mr Shaikh Mazhar A. Jahagirdar, Advocate for applicants

Mr. A. B. Jagtap, Advocate for respondent no. 1

Mr. M. M. Ambhore, Advocate for respondent no.3

CORAM : SUNIL P. DESHMUKH, J.

DATE : 13th April, 2018

ORDER :

1. Heard learned counsel for the parties.
2. Nawaz Hasan Pathan - husband of applicants no. 1 and 2 and father of applicants no. 2, 4, and 5 died in vehicular accident in 2012.
3. Learned counsel Mr. Taushikar for applicants submits that deceased had been sole bread earner in the family. Since his death, family is living in pitiable economic condition. Their day to day life has become miserable and as such applicants require amount of compensation.

4. He further submits, tribunal's award as on the date in favour of the applicants. The amount granted by the tribunal is not corresponding to the demand made by claimants nor to the earning of deceased. The deceased was a trader and earning handsome income. They are in dire need of money for day to day maintenance and also for educational expenses of applicants no. 2, 4 and 5.

5. Learned counsel for respondent no. 3 – insurance company – appellant before high court in first appeal, however, submits that there is a breach of terms under the policy as deceased had been travelling in goods vehicle and as such, liability would not be incurred by insurance company. He, therefore, opposes.

6. However, having regard to that accident took place in 2012, need of the family is not particularly in dispute, and since minor applicants are taking education and also that vehicle had been insured with the appellant – insurance company which has been held liable to the extent depicted under the award, it would be expedient to allow the applicants to withdraw amount to the extent of fifty per cent. As such, following order :

(i) Fifty per cent of the amount deposited along with accruals thereon may be allowed to be withdrawn by applicants on furnishing undertaking to the satisfaction of the Registrar (Judicial) to the effect that the amount being withdrawn by

them would be paid back / deposited by them in this court within a period of three months from the date of decision in the appeal, if it goes adverse to their interest.

(ii) Amount being allowed to be withdrawn as aforesaid shall be shared in same proportion as apportioned under the award by tribunal and shall also be given similar treatment.

(iii) As such amount being withdrawn for minor applicants no. 2, 4 and 5 be invested in a fixed deposit receipts in a nationalized bank earning interest. Interest earned be expended over minors. Undertaking to that effect shall be filed by applicant no. 1 and 3 and they shall furnish copies of fixed deposit receipts to this court.

7. Rest of the amount lying deposited in this court may be invested in a nationalized bank earning interest.

8. Civil application is disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd