

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

CIVIL APPLICATION NO. 4712 OF 2018
IN
FIRST APPEAL [STAMP] NO. 39621 OF 2017

Nasim Bee Shaikh Yaqub and others .. Applicants

versus

Reliance General Insurance Co. Ltd.
and others .. Respondents

Mr. Mohit R. Deshmukh, Advocate for applicants
Mr. V. P. Raje, Advocate, holding for Mr. R.H. Dahat,
Advocate for respondent no. 1

CORAM : SUNIL P. DESHMUKH, J.
DATE : 13th April, 2018

ORDER :

1. Applicants seek to withdraw the amount deposited by insurance company with interest accrued thereon.

2. Learned counsel for applicants submits that Shaikh Yaqub who is the husband of applicant no. 1 and father of applicants no. 2 to 5 died in vehicular accident which took place in 2014. Offending vehicle is insured with the appellant – insurance company. He further submits deceased being sole bread earner in the family, it has become difficult for the family to live day to day life for want of source of income and particularly to meet the educational expenses of applicants no.2 to 5. The family hardly has income to eke-out existence. It would be difficult for them to meet with their

expenses in the absence of source of income. The family is thus facing acute economic difficulties in living day to day life for want of financial aid.

3. Learned counsel for insurance company opposes, submitting that driver of offending car was not having driving licence and there was thus breach of policy and that accident took place because of rash and negligent driving of deceased and not by driver of offending vehicle and further that it is a case of contributory negligence.

4. However, it would be required to be taken into account that accident occurred in 2014, deceased was a contractor and also possessed some agricultural land. In the absence deceased, there is loss of bread earner and loss of income. Further, applicants no. 2 to 4 are stated to be taking education.

5. Having regard to aforesaid, it would be expedient to allow the applicants to withdraw amount on following conditions:

(i) Fifty per cent of the amount deposited in this court may be allowed to be withdrawn by applicants on furnishing undertaking to the satisfaction of the Registrar (Judicial) to the effect that the amount being withdrawn by them would be paid back / deposited by them in this court within a period of three months from the date of decision in the appeal, if it goes adverse to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) Further twenty five per cent of deposited amount may be withdrawn by applicants on furnishing solvent security to the satisfaction of the Registrar (Judicial) of this court.

(iii) 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. As such amount being withdrawn for applicants no. 2 to 5 be invested in a fixed deposit receipts in a nationalized bank earning interest as directed under clause (4) of the award. Interest earned be expended over educational expenses of applicants no. 2 to 5. Undertaking to that effect shall be filed by applicant no. 1. Applicant no. 1 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

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