

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 CIVIL APPLICATION NO. 6161 OF 2018
IN
FAST/5702/2018
WITH
CA/2521/2018
IN
FAST/5702/2018
WITH
CA/2522/2018
IN
FAST/5702/2018

USHABAI NANDKISHOR KADAM AND ORS.
VERSUS

THE BRANCH MANAGER, UNITED INDIA INSURANCE CO.
LTD., THR ITS BRANCH MANAGER AND ORS.

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Mr. V.B.Dhage, Advocate for applicants.
Mr. S.R.Bodade, Advocate for R – 1.
Mr. B.N.Patil, Advocate for R – 3.

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CORAM: VL.ACHLIYA, J.

DATE : 08/08/2018

ORAL ORDER :

1. The applicants have moved this application for permission to withdraw the amount deposited by respondent No. 1 – Insurance Company in terms of interim order passed by this Court while granting stay to the execution proceeding.

2. Heard learned counsel for the applicants and respondent – Insurance Company. Perused the Judgment and Award passed by Tribunal.

3. Learned counsel for respondent – Insurance Company opposed

the application with contention that the appellant has good case to succeed in appeal. By referring the Judgment and order passed by trial Court, learned counsel pointed out that the deceased was driving motor cycle which was claimed to be hit by the tractor coming from opposite direction. He submits that the evidence on record clearly indicate that there was head on collision between the motorcycle and tractor. The deceased was equally responsible for the accident and, therefore, the trial Court ought to have apportioned the liability in the ratio of 50:50. He further submits that there was breach of policy condition on the part of insurer. The deceased was not holding driving licence to drive the motorcycle on the alleged date and time of the accident. He further submits that the compensation assessed is without any evidence to prove the income of the deceased by the claimant. By referring the Judgment and order, learned counsel submits that though it is claimed that the deceased was serving in the employment of Dinkar Patil [P.W.3]. The Court has found his evidence not reliable. It is submitted that in absence of any proof of income, notional income could not have been assessed more than Rs. 3,000/- per month. In this back-ground, learned counsel submits that the amount as assessed by the Tribunal is contrary to law and on too much higher side.

4. On the other hand, learned counsel for the applicant supported the Judgment and Order passed by the trial Court and submits that the Tribunal has dealt with such challenges as raised in appeal.

5. On due consideration of the submissions advanced, I am of the view, there is arguable case in favour of the appellant which needs to be considered in appeal. Considering the overall facts of the case and the grounds raised in the appeal, I am of the view passing of following order would meet the ends of justice.

ORDER

[i] Subject to out-come of appeal, the applicants are permitted to withdraw the amount of Rs. 5 Lakhs [Rupees Five Lakhs]. Out of amount of Rs. 5 Lakhs, applicant No. 1 be paid sum of Rs. 2.5 Lakhs [Rupees Two Lakhs Fifty Thousand] and applicant Nos. 2 to 6 be paid amount of Rs. 50,000/- [Rupees Fifty Thousand] each on each of them furnishing written undertaking to the effect that in case the Award passed by the Tribunal is set aside and they are required to repay the amount, they shall pay the same within twelve weeks from the date of this order on furnishing undertaking, the amount be transferred in the savings bank account of the applicant.

[ii] Balance amount of 50% with accrued interest, if any, over the amount deposited be invested in fixed deposit initially for a period of three years with State Bank of India, High Court branch, Aurangabad with standing instructions to renew the same till further orders from the Court.

6. Out of interest accrued over the amount invested in fixed deposit the amount to the extent of 75% be paid to the applicant No. 1 for herself and her children i.e. applicant Nos. 2 to 4 and 25% amount of interest be paid to applicant Nos. 5 and 6. The amount of interest be transferred to their respective savings bank account after every three months. The payment of interest shall be subject to out-come of decision in the appeal.

7. The application disposed of in above terms.

[V.L.ACHLIYA]
JUDGE