

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

1004 CIVIL APPLICATION NO. 7887 OF 2018
IN FA/1492/2018

SANGITA KAILAS PATIL AND OTHERS
VERSUS

THE NEW INDIA ASSURANCE CO LTD., THR ITS AUTHORIZED OFFICIAL
AND ANOTHER.

Advocate for applicants: Shri M.M. Bhokarikar

Advocate for respondent no.1: Shri S.G. Chapalgaonkar

Advocate for respondent no.2: Shri R.S. Banik h/f Shri V.P. Latange.

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CORAM: V.L. ACHLIYA, J.

DATE: 03.08.2018

PER COURT :

1] The applicants have moved this application for permitting them to withdraw the amount deposited by the appellant – Insurance Company towards satisfaction of the award passed by the Tribunal.

2] Heard learned counsel for the applicants and the respondents. Perused the award passed by the Tribunal.

3] Learned counsel for the appellant – Insurance Company submits that the appellant has a very good case to succeed in the appeal. It is pointed out that as per the case pleaded by the claimants that the deceased was

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proceeding on a motorcycle, which was owned by the respondent no.2 and insured with the respondent no.1. The deceased was riding the motorcycle as a pillion rider. The respondent no.2 was driving the motorcycle. When they reached near Bambhori Naka, the truck coming from opposite direction gave dash to motorcycle, which led to death of the deceased. He submits that immediately after the accident, the FIR was lodged and offence came to be registered against the unknown driver of the truck. The driver of the unknown truck, who hit the motorcycle from opposite direction while overtaking the vehicle ahead of him, did not stop. He further submits that the claimants have not examined any witness to the incident. The respondent no.2 who was driving the motorcycle and lodged the FIR has stepped into the witness box and categorically deposed that the accident had occurred due to sole rash and negligent driving of truck coming from opposite direction. It is contended that without any evidence, the Tribunal has fastened the liability against the owner, driver and insurer of motorcycle. In this background, the learned counsel submits that the appellant – Insurance Company has a good

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case to succeed in the appeal and in case the applicants are allowed to withdraw the amount, then it will be difficult to recover the amount.

4] On the other hand, the learned counsel for the applicants has supported the judgment and order passed by the Tribunal and submits that there is no merit in the appeal.

5] Having considered the submissions advanced in the light of the overall facts of the case and the grounds raised in the appeal, I am of the view that there is an arguable case to be considered in the appeal. In case the applicants are allowed to withdraw the entire amount, it will be difficult to recover the same. I am, therefore, inclined to pass the following order:-

O R D E R

a] Subject to outcome of the appeal, the applicants are permitted to withdraw the amount of Rs.5,00,000/- out of the amount deposited by the appellant – Insurance Company on their furnishing undertakings to the satisfaction of the Registrar (Judicial) to the effect that in the event the award is set aside or modified

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and they are required to re-deposit the amount, they shall deposit the said amount within twelve weeks from the date of such order.

b] On furnishing undertakings by the applicants, the amount of Rs.3,00,000/- be paid to the applicant no.1 and the applicant nos.2 to 5 be paid Rs.50,000/- each. Accordingly, the amounts shall be paid to the applicants by transferring the amounts to their savings bank accounts.

c] The balance amount be invested in a fixed deposit initially for a period of three years with State Bank of India, High Court Branch, Aurangabad, subject to renewal till the disposal of the appeal or further orders from this Court, whichever is earlier.

d] The application is disposed of in the aforesaid terms.

(V.L. ACHLIYA, J.)