

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5169 OF 2018
IN
FIRST APPEAL NO. 1117 OF 2017

JYOTI PRAKASH KAPSE AND OTHERS
VERSUS
RELIANCE GENERAL INSURANCE CO.
THROUGH ITS BRANCH MANAGER
AURANGABAD AND OTHERS.

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Mr. Mohit R. Deshmukh, Adv. for applicants.
Mr. V.P. Raje, Adv. for respondents.

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CORAM : K.K. SONAWANE, J.

DATE : 2ND JULY, 2018.

PER COURT:

1] Not on board. Taken on board at the request of learned counsel for parties.

2] Heard learned counsel for the applicants and respondent- Insurance company. Perused the application. The appellant/Insurance company has already deposited in all, a sum of Rs. 33 Lakhs approximately towards compensation, pursuant to the award passed by the learned Tribunal. The claimants being legal heirs of deceased Durgadas Shinde are seeking permission to withdraw the amount.

3] The learned counsel Shri Raje appearing for the Insurance company raised objection and submits that the appeal came to be filed on the ground of composite negligence on the part of vehicles involved in the accident. In such circumstances, it would not proper to allow the claimants for withdrawal of the entire sum of compensation deposited by insurance company in this court.

3] In view of nature of subject matter and the grounds raised in the

appeal, there is no impediment to allow the claimants/applicants for withdrawal of atleast 75% of the amount deposited in this court, which would accrue to lump-sum amount of Rs. 24 Lakhs. It would not cause any injustice or prejudice to the appellant/insurance company. In contrast, it would sub-serve the purpose in the interest of justice. The interest of the appellant/Insurance company could be protected on imposing certain conditions on the applicants for refund of the amount in case of success of the appellant insurance company in the appeal.

4] Accordingly, the application stands allowed. The applicants are permitted to withdraw lump-sum amount of Rs. 24 lakhs from the amount of compensation deposited in this court, subject to condition that the applicants shall furnish an undertaking to refund the amount so withdrawn in case any contingency arises in the appeal.

5] It is stipulated that out of total sum of Rs. 24 Lakhs allowed to be withdrawn by the applicants, the applicant No.1 - Jyoti Prakash Kapse be permitted to withdraw an amount of Rs.10 Lakhs, subject to furnishing undertaking as aforesaid. It is further directed that an amount of Rs. 5 Lakh each be invested in fixed deposit receipt in the name of applicant No.2 Geeta and applicant No.3 Rani, till settlement of their marriage or for a period of six years whichever is earlier. The rest of the amount of Rs. 4 Lakhs be invested in the name of applicant No. 4 Nilesh for a period of six years.

6] The balance 25% of decretal amount remained in this court be invested in fixed deposit receipt in any nationalized bank for a period of two years or till decision of the appeal on merit with liberty to renew the same, in future if required.

7] Accordingly, the application stands disposed of in above terms . Registry to do the needful for disbursement of the amount as directed above.

[K.K.SONAWANE, J]

grt/-