

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4919 OF 2018
IN FA/5192/2017

ASHA LAXMAN BURLE AND ORS
VERSUS
IFFCO TOKYO GENERAL INSURANCE CO. LTD., THR ITS
AUTHORIZED SIGNATORY AURANGABAD A

...
Mr. P.D. Dadpe, Advocate for applicants
Mr. S.G. Chapalgaonkar, Advocate for respondent no.1
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 11-04-2018

ORDER :

1. Heard learned counsel for the parties.
2. Deceased - Laxman Shesherao Burle had been working as peon in medical college and hospital at Nerul, Navi Mumbai. Due to the accident which occurred on 09-11-2015, he died leaving behind him wife, children and parents, who were dependent on him. The family has been exposed to hardship after his death as their earning source was deprived in the process. Their economic condition has worsened and they are in dire need of the compensation amount granted by the tribunal. They require money for day to day needs as well as for education of applicants no.2 and 3. Additionally, the parents being old, also require

medical attention frequently. The applicants, therefore, seek withdrawal of the amount deposited in this court by the insurer - appellant.

3. Mr. Chapalgaonkar, learned counsel appearing for insurer submits that the evidence as adduced indicates that there was no negligence on the part of motorcycle driver and the tribunal had considered the same. Whole contribution and negligence had been on the part of the driver of the unknown vehicle. In the circumstances, according to him, having regard to legal position obtaining under the decisions by supreme court, the appellant - insurance company may not be liable to bear the responsibility of payment of compensation. He, therefore, purports to resist the application.

4. With the death of Laxman, in the absence of anything on record to show that his family has other regular income source, the need of family may have to be given regard to.

5. In the circumstances, it would be expedient to allow applicants to withdraw 50% of the amount deposited in this court with accrued interest thereon, subject to following conditions :-

I) 25% of the amount deposited along with interest thereon, be withdrawn by applicants on furnishing security to the satisfaction of the Registrar (Judicial) of this court.

II) 25% of the amount may be withdrawn by applicants on furnishing undertaking that the amount so withdrawn would be paid back / re-deposited by them in this court within a period of three months from date of decision in the appeal, if the same goes against the applicants. Undertaking to be filed within a period of three weeks from today.

III) The withdrawn amount will be shared in the same proportion as per the apportionment under the award and would be given treatment accordingly as referred to therein, particularly that the amount coming to share of minor children, from the withdrawn amount, would be invested in a nationalized bank earning interest and interest may be withdrawn by applicant no.1 and expended over minor children. Copies of fixed deposit receipts be furnished to this court.

6. Application accordingly is disposed of.

[SUNIL P. DESHMUKH]
JUDGE

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