IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 CIVIL APPLICATION NO. 7500 OF 2018
IN
FIRST APPEAL NO. 4080 OF 2017

LALITA CHANDRAKANT KALYANE & ORS.
VERSUS
RELIANCE GENERAL INSURANCE COMPANY LTD.
THR. ITS AUTHORIZED OFFICIAL, AURANGABAD
& ANR.
......
Mr. D.Y.Nandedkar, Advocate for Applicants.
Mr. A.S.Osmanpurkar, Advocate for R -1.
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CORAM : K.K.SONAWANE, J.
DATE : 5th JULY, 2018
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ORAL ORDER :

1. Heard the learned counsel for the applicants and the learned counsel for respondent No. 1 – Insurance Company.

2. Perused the application seeking permission to withdraw decreetal amount deposited in this Court.

3. The Insurance Company in all deposited around Rs. 60 Lakhs approximately towards the compensation amount as per the order passed by the learned Tribunal. Learned counsel for Insurance Company raised objection and submits that the Tribunal did not appreciate the circumstances in its proper perspective and committed error in applying multiplier for computation of correct amount of compensation. The Tribunal also did not appreciate the composite negligence of the driver involved in the accident. The owner utilized private vehicle for carrying the passengers on hire. There was contravention of terms and conditions of the policy. The Insurance Company has every hope of success in the Appeal.

Hence, learned counsel submitted that the applicants may not be allowed to withdraw the amount.

4. Having given anxious consideration to the arguments advanced on behalf of both sides, it reveals that deceased Chandrakant was employed in Zilla Parishad as school teacher. As per the record, his year of birth was shown as 1965. The alleged accident was occurred in the month of march, 2011. In view of age of the deceased, apparently there would be error in applying the multiplier by the learned Tribunal for assessment of compensation amount. However, the objections would be determined at the time of final hearing of the Appeal. The rest of the objections in regard to the contributory negligence would not affect entitlement of the claimants to get compensation amount. In view of attending circumstances on record and the nature of objection raised on behalf of Insurance Company, there would not be any impediment to allow the applicants to withdraw at least Rs. 35 Lakhs lump sum amount from the decreetal amount deposited in this Court. More over, the interest of the appellant could be protected by imposing certain fetter on the claimants while withdrawing the amount. It would sub-serve the purpose in the interest of justice. Hence, the application deserves to be allowed.

5. Accordingly, the application stands allowed partly. The applicants are hereby permitted to withdraw lump sum amount of Rs. 35 Lakhs from the total decreetal amount of Award deposited in this Court on behalf of appellant Insurance Company subject to condition that the applicants/claimants shall furnish undertaking to refund the amount so withdrawn in case any contingency arises in the Appeal.

6. It is further stipulated that from the total sum of Rs. 35

Lakhs allowed to be withdrawn, the amount of Rs. 7 Lakhs be paid to applicant No. 1 Lalita Wd/o Chandrakant Kalyane, Rs. 4 Lakhs be disbursed in favour of applicant No. 2 Dnyaneshwar s/o Chandrakant Kalyane and Rs. 3 Lakhs be paid to applicant No. 6 Subhadrabai w/o Venkatrao Kalyane. It is further directed that from the rest of amount of Rs. 21 Lakhs, balance amount from Rs. 35 Lakhs allowed to be withdrawn by the claimants, amount of Rs. 7 Lakhs each be invested in the name of applicant No. 3 Vidya d/o Chandrakant Kalyane and applicant No. 4 Mira d/o Chandrakant Kalyane for a period of six years or till settlement of their marriage whichever is earlier. Rest of the remaining amount of Rs. 7 Lakhs be invested in the name of applicant No. 5 Rameshwar s/o Chandrakant Kalyane in F.D.R. in any nationalized bank for a period of six years. Accordingly, the total sum of Rs. 35 Lakhs be disbursed amongst the applicants as referred above.

7. Rest of the balance decreetal amount remained deposited in this Court be invested in F.D.R. in any nationalized bank or till decision of the Appeal whichever is earlier with liberty to renew the F.D.R. in future, if required.

8. Accordingly, the application stands disposed of in above terms. Registry to do the needful for disbursement of amount in favour of applicants/claimants as mentioned above.

[K.K.SONAWANE]
JUDGE