

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5030 OF 2017
IN
FIRST APPEAL [STAMP] NO. 34284 OF 2016

Manishha Sampat Bhangе and others ... Applicants

versus

Hanumant Balu Dhonde and another ... Respondents

Mr. Subhash C. Choudhari, Advocate for applicants

Mr. S. G. Chapalgaonkar, Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.

DATE : 13th April, 2018

ORDER :

1. Heard learned counsel for the parties.
2. Applicant no. 1 is widow of deceased Sampat who died in the accident which is stated to have occurred by collision of motorcycle with offending vehicle – a truck. Sampat was earning member in the family. He is stated to have worked as driver and is also stated to have possessed certain agricultural land. Applicants no. 2 and 3 are minor sons and applicants no. 4 and 5 are parents of deceased.
3. So far as relations among the family members of the deceased is concerned, there is no dispute over the same nor is there any dispute about that Sampat died because of accident.

4. Learned counsel Mr. Chapalgaonkar appearing for appellant – insurance company submits that involvement of offending vehicle itself is doubtful. As a matter of fact, there may be sufficient evidence on record depicting that insured offending vehicle is not absolutely responsible for accident. Further, he contends that although a case is sought to be made out by applicant about deceased being a driver, the tribunal has not accepted the same and had considered the applicants not to have placed material on record supporting earning of the deceased. He submits that insurer is not liable and not at least to the extent held by the tribunal under the award.

5. Looking at aforesaid while the award has been passed in favour of the claimants and there being no particular dispute that deceased had been an earning member, the family since 2013 apart from losing association of deceased, has been deprived of income earned by him. It is discernible that applicants may be dependent on the income of the deceased.

6. In the circumstances, it would be expedient to allow the applicants to allow fifty per cent of the amount deposited along with accruals thereon on following conditions:

- (i) Twenty five per cent of the amount deposited in this court may be allowed to be withdrawn by applicants on furnishing undertaking to the satisfaction of the Registrar

(Judicial) to the effect that the amount being withdrawn by them would be paid back / deposited by them in this court within a period of three months from the date of decision in the appeal, if it goes adverse to their interest.

(ii) Further twenty five per cent of deposited amount may be withdrawn by applicants on furnishing solvent security to the satisfaction of the Registrar (Judicial) of this court.

(iii) Amount being allowed to be withdrawn as aforesaid shall be shared in the same proportion as apportioned under the award by the tribunal and shall also be given similar treatment. As such amount being withdrawn for minor applicants no. 2 and 3 be invested in a fixed deposit receipts in a nationalized bank earning interest. Interest earned be expended over the minors. Undertaking to that effect shall be filed by applicant no. 1. Applicant no. 1 shall furnish copies of fixed deposit receipts to this court.

7. Rest of the amount lying deposited in this court may be invested in a nationalized bank earning interest.

8. Civil application is disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd