IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5489 OF 2018
IN FA/5043/2017

PRATIBHA WD/O ANIL LOKHANDE AND ORS
VERSUS
M/S SHRIRAM GENERAL INSURANCE CO. LTD., THR ITS BRANCH MANAGER AURANGABAD AND ORS

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Advocate for Applicants : Mr. Bhushan S. Dhawale.
Advocate for Respondent No.1 : Mr. M. A. Deshmukh h/f.
Mr. S. G. Chapalgaonkar.

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CORAM : K.K. SONAWANE, J.
DATED : 3rd JULY, 2018.

Order :-

Heard learned counsel for the applicants-original claimants and learned counsel for respondent No.1 - Insurance Company. Perused the application and relevant documents placed on record.

2. The present application is filed by the applicants being legal heirs of deceased Anil Bhujangrao Lokhande seeking permission to withdraw the decreetal amount of Rs.1,25,20,699/- (Rs. One Crore Twenty Five Lakhs Twenty Thousands Six Hundred Ninety Nine Only) in lieu of compensation deposited by the appellant- Insurance Company in this Court.

3. The learned counsel for the respondent No.1- Insurance Company raised objection and submits that the learned Tribunal did not appreciate the factual aspects of the matter in it's proper perspective. The Tribunal has taken into consideration the documents of Income Tax returns of the deceased which were submitted to the Income Tax

Department after the death of deceased. The income assessed by the Tribunal appears to be erroneous and not justifiable for calculation of just and reasonable compensation for the death of deceased occurred in vehicular accident. He further pointed out that the Tribunal granted 50 % amount towards future prospectus. He relied upon the legal guide lines delineated by the Apex Court in the case of - ***National Insurance Company Limited Vs. Pranay Sethi and others reported in (2017) 16 Supreme Court Cases, 680***. He asserted that it is erroneous to award 50 % towards future prospectus in this case. He requested not to allow the applicants-claimants for withdrawal of the amount deposited in this Court.

4. Having considered the rival submissions and the nature of subject matter as well as factual score, I find it justifiable to allow the applicants-original claimants to withdraw at-least 50 % of the amount of compensation deposited in this Court on certain terms and conditions. The rest of the 50 % balance amount be invested in FDR in any nationalized bank to protect interest of appellant- Insurance Company. Definitely, it would sub-serve the purpose in the interest of justice and it would not cause any prejudice or loss to the appellant-Insurance Company. Hence, application deserves to be allowed.

5. Accordingly, application stands allowed partly. The applicants-original claimants are hereby permitted to withdraw 50 % of the decreetal amount deposited on behalf of appellant- Insurance Company in this court in lieu of compensation as directed by the learned Tribunal subject to condition that the applicants-original claimants shall furnish the undertakings to the effect that they would refund the amount so

withdrawn forthwith in case of any contingency arises after decision of the appeal on merit. It is further stipulated that out of 50 % decreetal amount allowed to be withdrawn by the applicants-original claimants, the lump-sum amount of Rs.20,00,000/- (Rs. Twenty Lakh Only) be kept in Fixed Deposit Receipts account in any nationalized bank in the name of applicant No.2 Pratik s/o. Anil Lokhande till he attains age of majority.

6. The rest of the 50 % decreetal amount remained deposited in this Court towards compensation, be invested in Fixed Deposit Receipts Account in any Nationalized Bank for a period of two years or till decision of the first appeal, whichever is earlier with liberty to renew the same in future, if required. The Registry to do the needful for disbursement of the amount in favour of applicants-original claimants as mentioned above. Accordingly civil application stands disposed of in above terms. No order as to the costs.

[K. K. SONAWANE]
JUDGE

rrd.