IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 8437 OF 2018
IN FA/247/2018

SUNITA LAXMAN SHERKHANE AND ORS
VERSUS
RELIANCE GENERAL INSURANCE CO. LTD., AND ANR
...
Advocate for Applicants : Mr. Sushant B. Choudhari
Advocate for Respondent No.1 : Mr. A. S. Usmanpurar.
Advocate for Respondent No.2 : Mr. N. B. Patil (Absent)
...

CORAM : P.R. BORA, J.

DATED : 27th AUGUST, 2018.

ORDER :-

1. By filing present application, applicants have sought withdrawal of amount of compensation as deposited by respondent- Insurance Company in the First Appeal No. 247 of 2018.

2. Mr. Choudhari, learned counsel appearing for applicants submitted that no substantial issues are raised by the appellant- Insurance Company against the impugned Judgment, and as such, applicants need to be permitted to withdraw the entire amount of compensation.

3. Mr. Usmanpurkar, learned counsel appearing for respondent- Insurance Company, opposed the application. Learned counsel submitted that the Tribunal has grossly erred in not considering the objections raised by Insurance Company as about the negligence on the part of the deceased. Learned

counsel submitted that specific defence was raised by Insurance Company that the alleged accident had occurred owing to negligence on the part of the deceased and no negligence is liable to be attributed on the part of driver of the vehicle which was insured with the appellant-Insurance Company. The learned counsel submitted that, the deceased neither was holding the valid and effective driving license, not had worn helmate and the alleged accident happened due to negligence of the deceased himself. Moreover, he was driving his vehicle in rash and negligent manner. Learned counsel submitted that in such circumstances, the withdrawal as prayed can not be permitted.

4. The learned counsel further submitted that the Court has not properly assigned or determined the compensation. Non pecuniary damages Rs.2,00,000/- as awarded by the Tribunal are on much higher side and in view of the Judgment in a case - ***National Insurance Company Limited Versus Pranay Sethi, [(2017) 16 SCC 680],*** non pecuniary damages could not exceeded to Rs. 70,000/-. The learned counsel, therefore, prayed for rejecting the application.

5. I have considered the arguments advanced by the learned counsel for respective parties. I have perused the impugned Judgment. There appears substance in the grounds raised by the appellant- Insurance Company in exception to the impugned

Judgment, and hence further scrutiny is necessary. However, it would be wholly unjust and improper to outrightly reject the application filed by the applicants. After having considered the objections raised by the Insurance Company, it appears to me that the applicants can be permitted to withdraw 50 % of the deposited amount. Hence, the order :-

O R D E R

1. The civil application stands partly allowed.

2. The applicants-original claimants are permitted to withdraw the sum of Rs.6,00,000/- (Rs. Six Lakh Only) out of the amount deposited by respondent-Insurance Company in this appeal on furnishing an undertaking to the satisfaction of the Registrar of this Court to the effect that in case any adverse order is passed after adjudication of the appeal on merits, the applicant/s will refund the received amount forthwith.

3. The remaining amount be invested in the name of applicants-original claimants in Fixed Deposit Receipts in any Nationalized Bank for a period of two years or till adjudication of the appeal, whichever is earlier.

4. The Registry to do the needful for disbursement as directed above.

5. The civil application stands disposed of accordingly.

6. Hearing of the first appeal is expedited.

[P.R. BORA, J.]

rrd.