

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 CIVIL APPLICATION NO. 9517 OF 2018
IN FA/2311/2016

USHA SUBHASH NEHETE AND ORS
VERSUS

UNITED INDIA INSURANCE CO. LTD. THR ITS BRANCH MANAGER,
JALGAON AND ANR

...

Advocate for Applicants : Shri Patil Vinod Prakash

Advocate for respondent no.1: Shri S. G. Chapalgaonkar

Advocate for respondent no.2: Shri Girish Rane

.....

CORAM: V.L. ACHLIYA, J.

DATE: 31.07.2018

PER COURT :

1] The applicants have moved this application to withdraw the amount of Rs.55,71,490/- towards compensation deposited by the appellant – Insurance Company, for the reasons set out in the application.

2] Heard learned counsel for the applicants and the respondents. Perused the judgment and award passed by the Tribunal.

3] Learned counsel for the applicants submits that the deceased was the sole earning member in the family and due to untimely death of the deceased, the applicants are facing great hardship. He submits that the compensation as awarded by the Tribunal is based upon the broad

- 2 -

principles laid down by the Apex Court in the case of *Sarla Verma & others v. Delhi Transport Corporation & another* (2009) 6 SCC 121) and there is no scope for interference in exercise of appellate jurisdiction with the reasons recorded by the Tribunal to award compensation.

4] On the other hand, learned counsel representing the appellant – Insurance Company submits that the appellant has a good case to succeed in the appeal. It is pointed out that the deceased was riding on the motorcycle, hit the Truck from the rear side and that too in the day time, which according to the learned counsel, clearly makes out the case that the deceased was solely responsible for the accident and the consequent death. It is further pointed out that the deceased was of 55 years of age and due for retirement within three years. He submits that in view of this fact, the loss of income ought to have been computed by applying the split multiplier considering the loss of income till the date of retirement and loss of income post retirement. In this context, the learned counsel relied upon the decision of this Court in the case of *Chaya v. Suresh*

delivered in **First Appeal No.985/2012** on 27.6.2014.

5] Considering the submissions advanced in the light of overall facts of the case and the grounds raised in the appeal, I am of the view that there is an arguable case, which needs to be considered in the appeal. I am, therefore, inclined to pass the following order:-

O R D E R

a] The applicants are permitted to withdraw amount of Rs.15,00,000/-. Out of Rs.15,00,000/-, amount of Rs.9,00,000/- be paid to the applicant no.1 and amount of Rs.3,00,000/- each be paid to the applicant nos.4 and 5. The aforesaid amounts be paid to the applicant nos.1,4 and 5 by transferring the amount in their respective savings bank accounts on furnishing undertakings to the satisfaction of the Registrar (Judicial) to the effect that in the event the appeal is allowed and the judgment and order of the Tribunal is modified, the applicants shall re-deposit the amount in terms of such order within twelve weeks from the date of passing of such order.

- 4 -

b] The balance amount be invested initially for a period of eighteen months in a fixed deposit with State Bank of India, High Court Branch, Aurangabad, with standing instructions to renew the same till further orders from the Court after every eighteen months.

c] The interest amount accrued over the amount invested be transferred in the ratio of 60% to the applicant no.1 and 20% each to the applicant nos.4 and 5 after every three months in their respective savings bank account till further orders from the Court or till disposal of the appeal, whichever is earlier, on furnishing undertakings by them to the effect that in the event the amount is required to be refunded, they shall deposit the same within twelve weeks from the date of such order.

d] The application stands disposed of in the aforesaid terms.

(V.L. ACHLIYA, J.)