

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

922 CIVIL APPLICATION NO. 10087 OF 2018
IN FA/2218/2018

SAYED WAHIDABEGUM W/O SAYED IBRAHIM AND ORS
VERSUS
ROYAL SUNDARAM ALLIANCE INSURANCE CO. LTD., THR ITS
AUTHORIZED OFFICER AND ORS

...
Advocate for Applicants : Mr. Suhas R. Shirsat
Adv. for Respondents: Mr. A.S. Deshpande.

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CORAM : V.L. ACHLIYA,J.

DATED : 7th August , 2018.

Order :-

1. The applicants/claimants have moved this application for withdrawal of the amount deposited by the appellant/insurance company.
2. The learned counsel for the appellant Insurance company opposed the application with contention that the appellant has a good case to succeed in appeal. He submits that there was a breach of policy conditions on the part of insured of vehicle. At the time of accident, the driver of the jeep was carrying 13 passengers as against permissible capacity of 6 passengers. He further submits that in terms of the policy, the Insurance company is liable to pay compensation to the extent of only six passengers. In view of the breach of policy conditions the Insurance company is not liable to pay compensation. The learned counsel also submitted that the compensation awarded is much on the higher side and contrary to law.
3. On the other hand, the learned counsel for the applicant submits that except the case of the applicant, all other cases of claimants arising out of same accident are settled by the Insurance company so also compensation has been paid to those claimants. He,

therefore, submits that there is no case to be considered in the appeal and the appeal filed is devoid of merit.

4. Considering the overall facts and circumstances of the case, the submissions advanced and the grounds raised in the appeal as well as the reasons and findings recorded by the Tribunal, I am of the view that passing of following order would meet the ends of justice :-

[a] Subject to outcome of the appeal, the applicants are permitted to withdraw an amount of Rs. 8,00,000/- (rupees eight lakhs) on furnishing written undertaking to the satisfaction of Registrar (Judicial) of this court to the effect that in the event, the appeal is allowed or award passed by the Tribunal is modified and they are required to deposit/refund the amount, they shall deposit the same within 12 weeks from the date of such order. On furnishing such undertaking the amount be transferred in their respective bank accounts.

[b] Out of the amount of Rs. 8 Lakhs, the amount of Rs. Rs. 5,00,000/- (rupees five lakhs) be paid to applicant No.1 wife of deceased and an amount of Rs. 1,50,000/- each be paid to applicant Nos. 2 and 3. The amount be paid by transferring the same in their respective bank accounts, on furnishing requisite bank particulars by them.

[c] The balance amount be invested in Fixed Deposit in State Bank of India, High Court, Branch initially for a period of 3 years, to be renewed if required. The interest accrued on the amount invested in fixed deposit shall be paid to applicant No.1, after every 3 months, by transferring the amount directly in her savings bank account for the purpose of her own maintenance as well as maintainance of minor children i.e. applicant Nos. 2 and 3.

[d] The payment of interest would be subject to final outcome of appeal. In the event award is modified or set aside, the applicants shall repay the same.

[e] Civil application stands disposed of in above terms.

[V.L. ACHLIYA]
JUDGE

grt.