

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

CIVIL APPLICATION NO. 9642 OF 2018
IN
FIRST APPEAL NO. 2612 OF 2017

Anjana Bhau Jadhav and another .. Applicants

versus

Divisional manager,
The New India Assurance Company
Limited and others .. Respondents

Mr Abhijeet C. Darandale, Advocate for applicants
Mr S. S. Chapalgaonkar, Advocate h/f Mr S. P.
Chapalgaonkar, Advocate for respondent no. 4

CORAM : SUNIL P. DESHMUKH, J.

DATE : 5th October, 2018

ORDER :

1. This application has been moved for modification of condition under order dated 24-02-2018 passed in aforesaid first appeal bearing no. 2612 of 2017 for withdrawal of compensation amount which relates to the accident which had taken place seven years before.

2. Learned counsel for applicants submits that the applicants require money to maintain family and to discharge liabilities of

hand loans. Applicant no. 2 has been doing labour work and applicant no. 1 is house wife. There is no dispute that the amounts deposited belong to them.

3. While the tribunal had passed award in favour of applicants, it had directed that certain portion of amount be invested in fixed deposits.

4. It is being pointed out in present civil application that compensation claim had been made against insurance companies of two vehicles. A common award came to be passed directing two insurance companies to share the compensation amount equally between them and as referred to above certain amounts were directed to be invested in fixed deposit for a particular period.

5. First appeal bearing no. 1968 of 2015 filed by National Insurance Company Limited challenging its fifty per cent liability under award in motor accident claim petition no.373 of 2011 has been dismissed under order dated 27-02-2017 granting liberty to the applicants to withdraw the amount deposited in this court. However, while first appeal bearing no. 2612 of 2017 by other insurance company, namely, New India Assurance Company Limited though had been disposed of under order dated 24-02-2018, it had been observed in paragraph no. 10

that the amounts in proportion of shares as awarded be allowed to be withdrawn by the claimants subject to same terms as in the award by the tribunal in motor accident claim petition no. 373 of 2011.

6. Learned counsel for the applicants submits that in the circumstances, although accident is seven year old and family being hard-pressed for money, only partial amount pursuant to dismissal of first appeal no. 1968 of 2015 could be withdrawn while the liability is much more. He submits, in such a case, restriction imposed i.e. bank deposit and withdrawal of the same after certain period render the benefit under the award to be rather illusory while the applicants need the amount in right earnest and, as such, applicants urge for relaxation of condition appearing in paragraph no. 10 under order in first appeal bearing no.2612 of 2017.

7. Learned counsel for the insurance company is reluctant to accede to the request made under application for modification of earlier order and contends that it is, in fact, to secure future of the applicants.

8. Although learned counsel for insurance company submits so, he is not in a position to question veracity of contents of civil application and submissions about applicants needing money in

right earnest and that in similar circumstances withdrawal of the amount has been allowed by this court under order in first appeal bearing no.1968 of 2015 filed by other insurance company.

9. Having regard to aforesaid, circumstances as referred to in the application and as submitted not being seriously doubted, the amount being awarded to the applicants is also not being disputed, the applicants have been allowed withdrawal of amount deposited by other insurance company as well is a matter not in dispute, it would be expedient to delete the condition mentioned in paragraph no. 10 of judgment and order dated 24-02-2018 passed in first appeal no. 2612 of 2017, allowing the applicants to withdraw the amount of compensation without any conditions.

10. As such, applicants are allowed to withdraw the amount deposited in this court along with interest and the condition with regard to investment of certain amount in fixed deposit and withdrawal of the same after particular period would not be insisted upon and the condition as appearing in paragraph no. 10 of order dated 24-02-2018 reading,

" subject to same terms as in the award by Motor Accident Claims Tribunal dated 30th April, 2015 in MACP no. 373 of 2011. " ,

be deleted and shall be deemed to have been deleted.

11. Application is accordingly granted in aforesaid terms and is disposed of. Henceforth, corrected copies of order be issued.

SUNIL P. DESHMUKH
JUDGE

pnd/-