

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

CIVIL APPLICATION NO. 9643 OF 2018
IN
FIRST APPEAL NO. 2611 OF 2017

Rani Gopal Katkar and others .. Applicants

versus

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

Abhijeet C. Darandale, Advocate for applicants
Mr S. S. Chapalgaonkar, Advocate holding for
Mr S. P. Chapalgaonkar, Advocate for respondent no. 4

CORAM : SUNIL P. DESHMUKH, J.

DATE : 5th October, 2018

ORDER :

1. Learned counsel for applicants submits that applicant no. 1 pursuant to order passed in first appeal bearing no. 1967 of 2015 dated 27-02-2017, had been allowed to withdraw the amount deposited by the national insurance company – appellant in said appeal from this court. He submits, so far as first appeal filed by other insurance company i.e. New india

Assurance Company Limited bearing no. 2611 of 2017 is concerned, the same has also been disposed of in similar terms as in first appeal no. 1967 of 2015 albeit with appendage that the applicants would be able to withdraw the amount subject to the same terms as in award by the motor accident claims tribunal in claim petition no.372 of 2011 which in turn requires applicant no. 1 to invest aggregate amount of ₹ 3,00,000/- in fixed deposit.

2. Learned counsel submits that thus far, applicant no. 1 has received aggregate amount of ₹ 3,00,000/-. It is submitted that applicants are not interested in withdrawal of the amounts so far as applicants no. 2, 3 and 4 are concerned. However, the amount of share of applicant no. 1 is earnestly required for education of applicants no. 2 to 4 as well as their maintenance. Some amount is also required to discharge liability of hand loans thus far taken and, therefore, modification or removal of terms as appearing in paragraph no. 19 of the judgment and order of this court dated 24-02-2018 in first appeal bearing no. 2611 of 2017 is sought so far as applicant no. 1 is concerned.

3. Learned counsel for respondent no.1 - insurance company is reluctant to accede to the request made under application for

modification sought of earlier order and contends that it is, in fact, a security for future of the applicants.

4. 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 while passing order in first appeal bearing no. 1968 of 2015 filed by other insurance company.

5. Having regard to aforesaid, the request does not appear to be illegitimate and applicant no. 1 appears to be only major person and heading the family.

6. In the circumstances, it would be expedient that amount to the extent of applicant no. 1's share in compensation granted may be allowed to be withdrawn from the amount deposited in this court by insurance company in first appeal bearing no. 2611 of 2017. As such, restrictions appearing in order dated 24-02-2018 in first appeal no. 2611 of 2017 shall not be deemed to detain withdrawal of the amount of share of applicant no.1. To that extent, the order shall be deemed to have been modified. Applicant no. 1 be allowed to withdraw her share as per award of

the motor accident claims tribunal deposited in this court along with interest accrued thereon.

6. Civil application is allowed in aforesaid terms and is disposed of.

SUNIL P. DESHMUKH
JUDGE

pnd/-