IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

41 CIVIL APPLICATION NO. 178 OF 2018
IN FA/1674/2016

MAYURI RAMDAS NAWAL AND ANR
VERSUS
THE NEW INDIA ASSURANCE CO. LTD., THR ITS DIV. MANAGER, AURANGABAD
...
Advocate for Applicants : Mr. Arun R. Vyawahare
Adv. for Respondents: Mr. M.M. Ambhore
...

CORAM : K.K. SONAWANE, J.

DATED : 8th JANUARY, 2018.

Order :-

1. Heard learned counsel for appearing parties.

2. Learned counsel for applicants submits that the Tribunal awarded total sum of Rs.3,45,000/- in favour of applicants, who were respondents No. 2 and 3 in original proceedings whereas Rs. 80,000/- were granted to original claimants i.e. parents of deceased Ramdas. The respondent – Insurance Company agitated the findings of the learned Tribunal by filing appeal under section 173 of the Motor Vehicles Act, 1988 (for short of "Act of 1988") and claimed that there was breach of condition of policy, therefore, appellant-Insurance Company is not liable to pay compensation. Moreover, the Tribunal has also decided the same issue and shifted the monetary liability on respondent No. 1 for payment of total compensation awarded in favour of claimants. However, the Tribunal directed the appellant - Insurance Company to pay the deceetal amount to the claimants, and lateron, the same be recovered from the respondents. Being dissatisfied with directions issued by the Tribunal for principle of pay and recover, the

Insurance Company preferred the appeal under section 173 of the Act of 1988 for redressal of its grievance. Pending the appeal appellant - Insurance Company has deposited the entire deceetal amount in this court, out of which parents of the deceased have withdrawn their shares to the tune of Rs. 40,000/- each i.e. total Rs. 80,000/- from the decreetal amount. The applicants are widow and daughter of deceased Ramdas and they were allowed to withdraw the sum of Rs. 1,00,000/- uptil this date from the decreetal amount. Rest of the balance of Rs. 2,45,000/- are remained to be withdrawn by the applicants.

3. Mr. Ambhore, learned counsel for respondent- Insurance Company raised the objection and submits that in case the applicants are allowed to withdraw the entire amount, it would create difficulties for the Insurance Company to recover the same from the owner, in case, the appellant succeed in the appeal. After appreciating the factual aspects and findings expressed by the Tribunal, I find no force in the objection raised on behalf of respondent- Insurance Company. The Tribunal accepted the contentions propounded on behalf of appellant- Insurance Company and shifted the monetary liability on the owner of offending vehicle. In view of social object and purpose of the provisions of Act of 1988, the Tribunal find it justifiable to direct the Insurance Company to pay the decreetal amount first to the claimants and thereafter recovered the same from the owner. But, the appellant- Insurance Company did not satisfy with the directions issued by the Tribunal.

4. Considering the factual aspect, I find that applicants being widow and daughter of deceased Ramdas are entitled to receive compensation for the loss caused to them due to vehicular accident. The matter in issue in present appeal is *inter-se* in between appellant-Insurance Company and the owner of the vehicle, and for that purpose the applicants should not be suffered by withholding the amount awarded in favour of them. In case, the appellant succeed in the appeal, the amount paid to the claimants would be recovered from the owner of the vehicle. Moreover, the Tribunal has also given similar directions to that effect in its operative part of the judgment and award. Hence, there is no impediment to allow the applicants-claimants to withdraw the remaining balance amount deposited in this Court along with interest accrued thereon. At the most to protect the interest of appellant - Insurance Company the directions will be issued to the applicants to withdraw the amount on furnishing undertaking to the effect that they would refund the amount in case of exigencies arises, in future. In such circumstances, application deserves to be allowed.

5. It is worth to mention that at the time of claim petition before the Tribunal, the applicant – Mayuri D/o Ramdas was the three years old minor girl. Now, she attained the age of majority. The applicants produced the document of her school leaving certificate on record showing her date of birth as 18th September, 1998. In such circumstances, there is no impediment to allow the applicant - Mayuri for withdrawal of her share already deposited in this appeal.

6. Hence, application is allowed in terms of prayer clause "B". The applicants are permitted to withdraw total sum of Rs.2,45,000/-, the remaining balance of decreetal amount deposited in this court along with interest accrued thereon, subject to condition that the applicants shall furnish undertaking that in case exigencies arises, in future, they would refund the amount of compensation received to them forthwith as per order passed by this Court.

7. Accordingly, application stands disposed of in above terms. Registry to do the needful for disbursement of the amount as directed above in favour of applicants-original claimants.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.