IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2278 OF 2018
IN
FIRST APPEAL (ST.) NO. 10430 OF 2016

Pragati Pradip Yerunkar & Ors. … Applicants

IN THE MATTER OF
The New India Assurance Co. Ltd. … Appellant
V/s.
Pragati Pradip Yerunkar & Ors. … Respondents

Mr. D.R. Mahadik for the Appellant-Assurance Company.
Mr. T.J. Mendon for Respondent Nos.1 to 4 and Applicants in CAF/2278/18.
Mr. V.V. Salunke for Respondent No.5.

CORAM : K.K. SONAWANE, J.

DATE : 14th AUGUST, 2018.

P.C. :

1 Heard the learned Counsel for the applicants-original claimants and the learned Counsel for Appellant-Assurance Company. The applicants-original claimants preferred the present application seeking permission to withdraw the compensation amount of Rs.28,88,818/- deposited before the M.A.C.T. Mangaon, Raigad in M.A.C.P. No.169 of 2010 by the appellant-Assurance Company. The applicants are widow, children and mother of the deceased Pradip Yerunkar, who succumbed to injury caused in a vehicular

accident. Learned Counsel for the appellant-Assurance Company raised the objection and submits that the learned Tribunal did not appreciate the evidence on record in its proper perspective and granted exorbitant and excessive amount. Learned Counsel further added that the driver of the offending vehicle was not possessing the valid license. The quantum of compensation amount awarded is unjust and improper, therefore, he requested not to allow the applicants-claimants to withdraw the compensation amount.

2 It is to be noted that the appellant-Assurance Company has already been exonerated from the monetary liability to indemnify the loss caused to the owner of the offending vehicle. The learned Tribunal directed the appellant-Assurance Company to make the payment of compensation first and then recover it from the owner of the offending vehicle. It is also essential to appreciate that the owner of the offending vehicle did not approach the appellate forum and put in controversy the findings expressed by the Tribunal. Appellant-Assurance Company filed the appeal against the directions of pay and recover compensation amount from the owner of the vehicle. In such circumstances, there is no impediment to allow the applicants-claimants for withdrawal of the compensation amount. The appellant-Assurance Company raised the objection in regard to the quantum

of compensation amount awarded by the Tribunal. In such circumstances, I find it justifiable to allow the applicants-claimants to withdraw atleast lump sum amount of Rs.20 lakhs from the compensation amount deposited in this matter. Definitely it would sub-serve the purpose in the interest of justice. Hence, the application deserves to be allowed.

3 Accordingly, the application stands allowed. The applicants-original claimants are permitted to withdraw the lump sum amount of Rs.20 lakhs from the compensation amount deposited in this matter subject to condition that the applicants-original claimants shall furnish the undertaking that they would refund the compensation amount so withdrawn forthwith in case any contingency arises in the appeal. The rest of the balance decretal amount lying in the M.A.C.T. Mangaon, Raigad deposited in this matter be invested in any nationalized bank in F.D.R. account for a period of two years or till decision of the present appeal on merit whichever is earlier with liberty to renew the F.D.R. in future if required.

4 It is further stipulated that out of lump sum amount of Rs.20 lakhs allowed to be withdrawn by the applicants-claimants, the amount of Rs.5 lakhs be paid to applicant No.2 Kum. Prachi, the amount of Rs.5 lakhs paid to applicant No.3 Kum. Prasad and the amount of Rs.2 lakhs be paid to

applicant No.4 Smt. Sunanda and rest of the balance amount of Rs.8 lakhs be paid to applicant No.1 widow Smt. Pragati Pradip Yerunkar.

6 The Registry of the M.A.C.T. Mangaon, Raigad shall take requisite step to disburse the compensation amount in favour of applicants-claimants as directed above and shall forward the compliance report to this Court.

7 In view of above, Civil Application stands disposed of.

(K.K. SONAWANE, J.)

Waishali Sushil Waghmare
Digitally signed by Waishali Sushil Waghmare
Date: 2018.08.24 16:25:44 +0530