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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 1322 OF 2018
IN
FIRST APPEAL No. 58 OF 2018

Smt. Pushpa Suryakant Vedpathak & Anr. ... Applicants
Vs.
Reliance General Insurance Co. Ltd. & Anr. ... Respondents

Mr. Rehul Mehta I/b KMC Legal Venture, for the Appellants in
FA. 58/2018 & Respondent No. 1 in CAF. 1322/2018.

Mr. Manan Surgai, for the Respondent Nos. 1 and 2 in FA.
58/2018, and for Applicant in CAF. 1322/2018.

CORAM : V. M. DESHPANDE, J.

DATE : JUNE 28, 2018

PC :-

1. This application is filed on behalf of the original claimants, viz. one widow and son of deceased Suryakant Vedpathak, who lost his life in an unfortunate accident. It is not at all in dispute that offending vehicle was insured with Respondent No. 1 insurance company.

2. Heard the learned counsel for the Applicants and the

learned counsel appearing for Respondent – insurance company, who has opposed this application.

3. The learned Tribunal, in my view, has correctly appreciated the pleadings and evidence, that is brought on record by the parties before it. Though it was the case of insurance company before the Tribunal that the claim cannot be granted because of the contributory negligence, in my view, the said plea was made only just to defeat, otherwise maintainable claim of the claimants, since insurance company has not adduced any evidence even to suggest regarding the said plea. The learned Tribunal has also considered the income of deceased Suryakant, in my view, proper perspective. Therefore, prima-facie, there is no fault in the impugned judgment and order passed by the learned Tribunal in granting the claim amount to the tune of Rs. 28,38,336/- alongwith 9% interest.

4. At the time of hearing, the learned counsel for the insurance company has fairly stated that insurance company has no objection if 50% of the amount, granted in favour of the

claimants is allowed to be withdrawn. Hence, the following order:

- (i) Application is partly allowed;
- (ii) Applicants / original claimants are entitled to withdraw 50% of the amount, so deposited by the insurance company with the learned Tribunal alongwith accrued interest and costs;
- (iii) Applicants / original claimants at the time of withdrawal of the aforementioned amount given an undertaking that in case appeal of the insurance company is allowed, in that event, they will refund the amount alongwith interest, that will be calculated by the court at that time, within 10 months from the date of judgment;
- (iv) The Applicants / original claimants are at liberty to file fresh application in future for withdrawal if they demonstrate claim for further withdrawal;
- (v) The registry is directed to transfer statutory deposit

of Rs. 25,000/- made by the insurance company in this Court to the learned Motor Accident Claims Tribunal, Pune, who shall invest this amount alongwith the balance decreetal amount in any nationalised bank, initially for a period of three years, and continue to do the same as and when occasion arises, in order to save interest of the claimants.

Sd/-
[V. M. DESHPANDE, J.]

Vinayak Halemath