

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4062 OF 2017

IN

FIRST APPEAL NO.822 OF 2017

Smt. Bharati Vijay Yanpure & Ors.] ... Applicants

In the matter of :

The New India Assurance Co. Ltd] ... Appellant's

Versus

Smt. Bharati Vijay Yanpure & Ors.] ... Respondents

Mr. T. J. Mendon for Applicants.
Mr. S. M. Dange for Respondent.

CORAM :- K. K. TATED &
SARANG V. KOTWAL, JJ.
DATE :- 11 JANUARY, 2018

P. C. :-

1. Heard the learned Counsel for the parties.
2. This Civil Application is preferred by the original Claimants for withdrawal of awarded amount deposited by the Appellant – Insurance Company in the Trial Court as per the Order passed by this Court in Civil Application No.2448 of 2017.

3. Mr. T. J. Mendon, the learned Counsel for the Applicants, submits that in the present proceeding, in the accident which occurred on 05/02/2011, the Applicant No.1 lost her husband. On the date of the accident, he was 46 years old, doing business. He submits that before the Trial Court, the Applicant placed on record the Assessment Order issued by the Income-Tax Department for the years 2007-2008 to 2009-2010 showing the income of the deceased per year. He submits that as per the Assessment Order for the year 2007-2008 the income of the deceased was Rs.15,05,073.61/-, for the year 2008-2009 Rs.26,95,545/- and for the year 2009-2010 it was Rs.23,64,118/-. He submits that on the basis of the deceased's income-tax returns and other evidence, the Tribunal held that the Applicants / original Claimants are entitled to a sum of Rs.2,25,24,086/- with 5 % interest towards the compensation. He submits that the Claimant Nos.2 and 3 are studying. He submits that the Claimant No.4 is a senior citizen. He submits that after the death of Claimant No.1's husband, it is very difficult for the Claimant No.1 to maintain herself as well as to bear the expenses of other Claimants. He submits that in the interest of justice, the Applicants be allowed to withdraw the amount deposited by the Insurance Company. He submits that if the present Civil Application is not allowed, irreparable loss would be caused to the Applicants.

4. On the other hand, Mr. S. M. Dange, the learned Counsel for the Appellant – Insurance Company, submits that the Appeal

preferred by them is already admitted by this Court. He submits that the accident occurred due to the negligence of the driver of both the cars. Hence, the Insurance Company is not responsible to pay the compensation. He further submits that even the Tribunal has awarded compensation on the higher side. He submits that if the entire amount is withdrawn by the Applicants / original Claimants, then it will be very difficult for them to recover the same if they succeed in the First Appeal. Hence, there is no question of allowing the Civil Application. He further submits that if this Court allows the Applicants to withdraw the amount, in that case, the Claimants may be directed to provide a solvent security or a bank guarantee for withdrawal of the amount.

5. We have heard both the sides.

6. It is to be noted that in the present proceeding, the Claimant No.1 lost her husband who was 46 years old. At that time, he was managing his own business. The Claimants already placed on record Assessment Order issued by the Income-Tax Department for the Assessment Years 2007-2008 to 2009-2010. On the basis of the Assessment Order issued by the Income-Tax Department and other documents, Trial Court held that the Claimants are entitled to a sum of Rs.2,25,24,086/- by way of compensation. Even the Tribunal held that the accident took place due to the rash and negligent driving of the driver of Maruti Suzuki Car SX 4 bearing registration No.MH 12 EX 1261.

7. Considering the submissions made by the learned Counsel for the Applicants and the averments made in para 4 of the Civil Application, we are of the opinion that the Applicants made out a case for allowing them to withdraw some amount at present, without furnishing any security. Hence, the following Order :

ORDER

(i) The Applicants are permitted to withdraw the following amount without furnishing any surety :-

(a) Smt. Bharati Vijay Yanpure – 20% of the total amount,

(b) Miss Priyanka Vijay Yanpure – 5% of the total amount,

(c) Master Yash Vijay Yanpure – 5% of the total amount,

(d) Smt. Sindhu Dattatraya Yanpure – 10% of the total amount.

(ii) The Tribunal is directed to invest the remaining amount in a fixed deposit of any nationalized bank for a period of one year and the same to be continued till further orders.

(iii) Civil Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

(K. K. TATED, J.)