

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

33 CIVIL APPLICATION NO.12666 OF 2019
IN FA/295/2018 WITH CA/10707/2017 IN FA/295/2018

RUKHAIYA BI W/O MUJAHID KHAN @ RUKHIYABEE W/O MAJAHIDKHAN
AND ORS
VERSUS
ANKIT SAHEBRAO PATIL AND ANR

...

Advocate for Applicants : Mr. Mayure Pramod C.
Advocate for Respondent no.1 : Mrs. Bharaswadkar Patil Kalpalata
Advocate for Respondent no.2 : Mr. Arun G. Dalal

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CORAM : MANGESH S. PATIL, J.

DATE : 02.12.2019

PER COURT :

Heard both the sides.

2. This is an application by the original claimants for withdrawal of the amount deposited by the appellant rider of a motorcycle who had been fastened with the liability to compensate them on account of death of their predecessor.

3. The learned advocate for the applicant points out that the appellant/respondent had failed to contest the proceeding before the Tribunal and it was decided *ex parte*. Even after filing the appeal and obtaining the stay, he failed to obey the condition, by not depositing the amount directed by this Court within the stipulated time. The learned advocate would then submit that after a long drawn process he has been able to procure some order in their favour and should be allowed to reap its

benefits.

4. The learned advocate for the respondent/appellant by referring to the affidavit in reply filed by his father submits that though there was delay in depositing the money in this Court, subsequently it was deposited with the leave of this Court as reflected in the order dated 14.06.2019.

5. The learned advocate for the respondent appellant further submits that there is a serious dispute as to his involvement in causing the accident. He is a juvenile and has been acquitted of the charge. He is ready to contest the claim petition before the Tribunal once it is remanded. She further submits that in fact, it is his retired old age father who has now to take steps for and on his behalf. He would only be praying for remand of the matter to the Tribunal so as to enable him to contest it. Once the money is paid, it would be lost forever and the First Appeal may be decided finally at the stage of admission.

6. After having considered the aforementioned facts and circumstances, it is apparent that the claimants/applicants have been waiting for compensation for last almost 6 years. Apparently, the respondent/appellant had failed to contest the claim before the Tribunal and suffered the judgment and order. If such is the state of affairs, it is he who should blame himself for the situation he is in.

7. Be that as it may, there seems to be some dispute as to the involvement of the vehicle being driven by the respondent/appellant but then this is not a stage to go into the merits of the appeal.

8. Considering all the aspects, in my view the applicants/original claimants deserve to be allowed to withdraw something from the amount deposited in this Court. So far as minor applicants are concerned, nothing can be allowed to be withdrawn to deprive them of the benefit under award. Therefore the application is allowed partly and only the applicant Nos. 1, 6 and 7 are allowed to withdraw Rs.50,000/-, Rs. 25,000/- and Rs.25,000/- respectively subject to furnishing usual undertaking. Appeal to be listed for final disposal on 10.01.2020.

(MANGESH S. PATIL, J.)

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