IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 CIVIL APPLICATION NO.12930 OF 2019
IN FAST/21770/2019

FARJANA MAKBOOL NADAF AND ORS
VERSUS
THE NEW INDIA ASSURANCE CO. LTD., AND ANR
...
Advocate for Applicants : Mr. Deshmukh Vivekanand B.
Advocate for Respondent No. 1 : Mr. S.S. Dargad.

CORAM : MANGESH S. PATIL, JJ.
DATE : 29/11/2019

PER COURT :

Heard both the sides.

2. This is an application by the original claimants for withdrawal of amount deposited by the Appellant/Insurance Company while preferring the appeal.

3. The learned advocate for the applicants submits that they may be allowed to withdraw the entire amount of compensation since the hotel business which was being run by the deceased by borrowing loan has been closed and even the loan account has become a NPA (non-performing asset)

4. The learned advocate for the Insurance Company opposes the application and submits that there is a serious allegation about breach of the terms and conditions of the policy. Besides, the claimants would only be entitled to compensation assessed on the basis of loss of labour or supervision in as much as the income of the deceased was from agriculture and the hotel business which could have been continued by the claimants. He therefore submits that the applicants may not be allowed to withdraw

the entire amount of compensation.

5. Considering the fact that the defence of the Insurance Company is about the breach of the terms and conditions and is not about the absence of risk cover, it would be entitled to recover what ever it is made to pay to the claimants, from the owner of the vehicle.

6. Considering the fact that the income of the deceased was from the agriculture and the hotel business which he was running, *prima facie* the applicants/claimants would be entitled to the compensation for not loss of income but for loss of labour and supervision. Considering all the aforementioned aspects, when there was ample evidence about the income of the deceased from both the sources and the fact that *prima facie* the assessment made by the Tribunal is in tune with the observations in case of ***Smt. Sarla Varma and others Vs. Delhi Transport Corporation and another; 2009 (2) T.A.C. 677 (SC)*** and ***National Insurance Co. Ltd. Vs. Pranay Sethi and Ors.; 2018(3) Mh.L.J. (SC) 70*** the applicants/claimants are entitled to withdraw 75% of the amount of compensation subject to furnishing usual terms and conditions.

7. The application is allowed. The applicants/claimants are allowed to withdraw 75 % of the amount deposited in this Court in the proportion mentioned in the impugned Award subject to furnishing usual undertaking.

(MANGESH S. PATIL, J.)

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