

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.14865 OF 2018
IN FAST/27950/2018**

**RANI VIJAY MOHOLKAR AND ORS
VERSUS
M/S. SHRIRAM GENERAL INSURANCE CO. LTD., THR ITS
AUTHORIZED SIGNATORY, AURANGABAD**

...
Advocate for Applicants : Shri Swapnil S. Rathi
Advocate for Respondent No.1 : Shri S. G. Chapalgaonkar

...
CORAM : P.R.BORA, J.

DATE: 18th January, 2019

PER COURT:-

1 Heard Shri S.S.Rathi, learned Counsel appearing for the applicants and Shri S.G.Chapalgaonkar, learned Counsel appearing for the respondent Insurance Company.

2 The applicants are seeking withdrawal of the amount of compensation deposited by the Insurance Company in this Court. The Motor Accident Claims Tribunal' Aurangabad has awarded compensation of Rs.84,84,184/- to the present applicants with interest thereon @ 7% p.a. from the date of filing of the claim petition.

3 The Insurance Company has deposited the entire

amount under the award alongwith interest thereon, which is more than Rs.1 Crore.

4 Shri Chapalgaonkar, learned Counsel appearing for the Insurance Company has opposed for granting withdrawal of amount stating that without there being any cogent evidence as about the income of the deceased, merely relying on some TDS certificates, the Tribunal has determined the income of the deceased and on the basis of the said income has assessed the amount of compensation. The learned Counsel submitted that the claimants have not placed on record the income tax returns of the deceased. The learned further submitted that there is no evidence on record as about the income of the deceased i.e. the account books or other particulars.

5 The learned Counsel further submitted that nothing has been brought on record whether deceased was having his own vehicles or was hiring the vehicles from some other agencies or individuals and was providing the same to some Companies or otherwise. The learned Counsel submitted that merely on the basis of the payment made by one

Company and while making the said payment had deducted TDS, may not be sufficient to decide the income of the deceased. The learned Counsel further submitted that the payment received from the said Company to the deceased cannot be said to be or accepted to be his net income. There may be several items of expenditure about which there is no evidence brought on record. In the circumstances, the learned Counsel prayed for rejecting the present application and to take up the matter for final disposal at the earliest.

6 I have considered the submissions advanced by the learned Counsel appearing for the applicants and learned Counsel appearing for respondent Insurance Company. I have perused the impugned Judgment. In paragraph No.20 of the impugned Judgment, the conclusion is recorded by the Tribunal as about the income of deceased Vijay. At this stage, it may not be proper to make any more discussion about merits of the material brought before the Tribunal, however, it is apparently revealed that merely on the basis of the TDS certificates, the income of the deceased could not have been determined by the Tribunal. In the

circumstances, the prayer of the applicants to remit the entire amount as has been deposited by the Insurance Company cannot be accepted. At the same time, the submission made on behalf of the Insurance Company opposing the disbursement of any amount from the deposited amount of compensation and the outright rejection of the application also cannot be accepted.

7 After having considered the submissions and on perusal of the impugned Judgment, it appears to me that if the applicants are permitted to withdraw a lumpsum amount of Rs.25,00,000/- from the deposited amount at present, that would serve the purpose and would meet the ends of justice. The appeal can also be taken up for hearing expeditiously.

8 Since the impugned Judgment is challenged mainly on quantum, the service, if at all is awaited against the other respondents, that cannot preclude the Court from taking the matter for final disposal. In the circumstances, the following order is passed:-

ORDER

I) The applicants are permitted to withdraw a sum of Rs.25,00,000/- from the deposited amount on submitting an undertaking to the satisfaction of the Registrar (Judicial) of this Court. Out of the aforesaid amount, a sum of Rs.20,00,000/- be remitted in favour of applicant No.1 - Rani Vijay Moholkar for herself and for applicant No.2 - Tanishka Vijay Moholkar, and a sum of Rs.5,00,000/- be remitted in favour of Pandurang Rama Moholkar for himself and applicant No.4 - Anusayabai Pandurang Moholkar.

II) The balance amount be invested in Fixed Deposit Receipt in any Nationalized Bank for the period till disposal of the appeal.

III) Civil Application No.14865 of 2018 stands disposed of.

(P.R.BORA)
JUDGE

SPT