IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

929 **CIVIL APPLICATION NO.14353 OF 2019 IN FA/2900/2019**

AMBIKA GANESH NIRMAL AND OTHERS
VERSUS
THE NEW INDIA ASSURANCE CO LTD AND ORS
...
Mr.M.S. Shaikh, Advocate for applicants.
Mr.S.S. Dargad h/f Mr.S.G. Chapalgaonkar, Advocate for respondent no.1.
...

CORAM: V.L. ACHLIYA,J.
DATE : 12.12.2019

ORAL ORDER:

The applicants-claimants moved this application seeking withdrawal of amount deposited by the appellant-insurance company.

2. Heard learned counsel for the applicants-claimants and Advocate representing the appellant-insurance company. Perused the judgment and award passed by the Tribunal.

3. Learned counsel for the appellant – insurance company opposed the application with contention that the appellant has good case to succeed in appeal. It is contended that the accident had occurred on 13.07.2015, no report of accident was lodged till 1st

August, 2015. By way of complaint lodged on 1st August, 2015 for the first time involvement of vehicle has been shown in the accident though the deceased died on 14.07.2015. No evidence adduced in the case to prove involvement of vehicle in the accident dated 13.07.2015. It is contended that the reasons and findings recorded by the Tribunal on the issue of involvement of vehicle are perverse and not sustainable in law. It is further submitted that the driver of the vehicle though made party his name was deleted.

4. On the other hand, learned counsel for the applicants-claimants supported the judgment and order passed by the Tribunal. It is contended that the Tribunal has considered the testimony of eye witness of the accident examined by the applicants while deciding the issue no.1 framed for consideration and categorically recorded the findings that the claimants have proved the involvement of vehicle insured with respondent no.2 in the accident. It is further submitted that the issue no.3 framed on the basis of defence of respondent no.2 has been answered in negative. In this background, learned counsel

submits that the appellant has no case to succeed in appeal and appeal is devoid of merit.

5. On due consideration of submissions advanced in the light of reasons and findings recorded by the Tribunal in foisting the liability against the respondent-insurance company and the order of apportionment passed by the Tribunal protecting the interest of the claimants, I am of the view that the following order would meet the ends of justice :-

ORDER

(i) The applicant no.1-claimant no.1 and applicant no.5 – opponent no.4 are permitted to withdraw the amount to the extent of 50% of the amount as per apportionment made by the Tribunal in clause (4) of the operative part of order. The balance amount be invested in fixed deposit in terms of order passed by Tribunal.

(ii) The amount be invested in fixed deposit in terms of order passed by the Tribunal in the name of claimant nos.2 to 4 i.e. minor children.

(iii) The interest accrued over the amount invested in the name of applicants be credited in their respective Saving Accounts after every three months till further orders from this Court.

(iv) The order of withdrawal of amount and payment of interest is subject to final decision of the appeal.

(v) The Civil Application is disposed of in above terms.

[V.L. ACHLIYA]
JUDGE

SGA