

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

936 CIVIL APPLICATION NO.14842 OF 2019
IN
FA/1967/2019

KONDYABAI PRAKASH GAWALI AND ANR
VERSUS
TATA AIG GENERAL INSURANCE CO. LTD., THR
ITS LEGAL MANAGER, PUNE

...
Mr.S.N.Janakwade, Advocate for
applicants.

Mr.S.S.Patil, Advocate for Respondent.

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

DATE : 20/12/2019

...

ORAL ORDER:

1. The applicant has moved this application seeking withdrawal of amount deposited by Insurance Company in terms of Award passed by Tribunal pursuant to conditional order passed by this Court.

2. Heard learned counsel for applicants/claimants and respondent/Insurance Company.

3. Learned counsel for appellant/Insurance Company opposed the application with contention that appellant have good case to succeed in Appeal.

It is submitted that deceased was travelling as a passenger in goods vehicle. The risk of deceased was not covered under the terms of policy issued by Insurance Company. The vehicle was driven in clear breach of condition of policy. In that view, the appellant/Insurance Company is not liable to pay any compensation.

4. On the other hand, learned counsel for applicants/claimants submits that the Tribunal has closely scrutinized the evidence in the light of rival pleadings and turned down the contention of appellant/Insurance Company as to breach of policy condition. It is submitted that deceased was travelling in vehicle as an employee of insured and not for hire and reward. In terms of policy the risk of deceased was duly covered by paying additional premium of the person employee for loading and unloading of goods.

5. On due consideration of submissions advanced, I am of the view that the following order would meet the ends of justice.

Hence, the following order.

ORDER

[i] Applicant Nos. 1 and 2 are permitted to withdraw the amount of Rs. 1 Lakh and

Rs.50,000/- respectively on furnishing undertaking to the satisfaction of Registrar [Judicial]. After making the payment of Rs. 1,50,000/-, the balance amount be invested in any Nationalized bank initially for a period of two years with standing instructions to renew the investment till further orders. The interest accrued over the amount invested in fixed deposit be paid to applicant No. 1 after every three months.

- [ii] The withdrawal of amount and payment of interest shall be subject to final out-come of Appeal. In case the appellant succeed and applicants/claimants are required to pay the amount, the applicants shall deposit the same within four weeks from the date of order to be passed by this Court.
- [iii] Liberty to move application for further withdrawal of amount if marriage of applicant No. 2 is settled.

6. Civil Application disposed of in above terms.

[V. L. ACHLIYA]
JUDGE