IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No.2695 of 2018
IN
FIRST APPEAL (ST) No. 24567 OF 2017

Smt. Yogita Krushna Pawar
and Ors. ...Applicants
In matter between

Reliance General Insurance
Company Limited ..Appellant
Vs.
Smt. Yogita Krushna Pawar and Ors...Respondents

Mr. Prashant P. Jadhav for the Applicants

Mr. Rahul Mehta i/b. KMC Legal Venture for the Appellant

Mr. Yogesh Pande for Respondent No.5

CORAM: K.K. TATED, J.

DATED : JUNE 19, 2019

P.C. :

1. Heard learned counsel for the parties.

2. By this civil application, the Applicant Nos.1 to 3/ Original Claimants are seeking permission to withdraw the amount deposited by

the Insurance Company, as per the judgment and award dated 2nd December, 2016 passed by the Motor Accident Claim Tribunal, Pune in MACP No. 819 of 2013.

3. The learned counsel for the Applicants submits that in an accident, which occurred on 11th August, 2018, Applicant No.1 lost her husband Krushna. On the date of accident, he was 44 years' old. At that time he was doing job as Generator Operator in Electric Division, Sassoon Hospital, Pune. He was permanent employee. His monthly salary was Rs.23,000/- p.m.

4. Learned counsel for the Applicants submits that because of accident, they filed application under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.40,00,000/- with interest. He submits that the Tribunal after considering the evidence on record held that the Claimants are entitled sum of Rs.37,28,690/- by way of compensation with interest @ 9% p.a. He submits that the Trial Court has awarded 40% amount of compensation to the Claimant No.1 and 15% amount of compensation to the Claimant Nos. 2 and 3 and 30% to claimant No.5. He submits that at present Applicant No.1

Smt. Yogita Krushna Pawar don't have any source of income. He submits that she have to maintain Claimant Nos. 2 and 3. On the date of accident, Claimant Nos. 2 and 3 were minor. He submits that now the Claimant No.2 is major and Claimants Nos. 2 and 3 are taking education. It is very difficult for the Claimant No.1 to maintain the expenditure of education as well as medical expenses, as also day-today expenditure of Claimant Nos. 2 and 3. Hence, Claimant NO.1 filed the present civil application for withdrawal of the awarded amount of compensation deposited by the Appellant Insurance Company.

5. On the other hand Mr.Rahul Mehta for the Appellant Insurance Company vehemently opposed the present civil application. He submits that if the entire amount is withdrawn by the Applicants/Original Claimants, then nothing will survive in the present First Appeal. He submits that they specifically raised the issued before the Trial Court about their liability, on the ground that there was breach of terms and conditions of insurance policy.

6. Heard both the learned counsels at length.

It is to be noted that in the present proceeding, Claimant No.1 lost her husband, who was working in Sasoon Hospital, Pune and was earning Rs.23,000/- p.m. So far as the issue raised by the Appellant- Insurance Company regarding breach of terms and conditions of the insurance policy is concerned, in paragraph 12 of the impugned judgment and award, the Tribunal held that the driver of the company was holding valid license.

7. Considering the fact that Applicant No.1 is a housewife and don't have any source of income, Applicant Nos. 2 and 3 are taking education, I am of the opinion that Applicant Nos. 1 and 2 can be permitted to withdraw some amount of compensation without furnishing any security, but subject to outcome of the First Appeal.

8. Hence, following order:

(a) Applicant No.1 Smt. Yogita Krushna Pawar is entitled to withdraw 20% of total compensation with interest accrued thereon and Applicant No.2 Sayali Krushna Pawar is entitled to withdraw 5% of total compensation with interest accrued thereon without furnishing any security, but subject to outcome of the First Appeal.

(b) Trial Court is directed to invest the remaining awarded amount in fixed deposit of any Nationalized Bank, initially, for a period of one year and same to be continued till further orders.

(c) Liberty is granted to the Applicants, if they so desire, to prefer appropriate application for withdrawal of the further awarded amount and that application be decided on its own merits.

(d) Civil Application stands disposed of accordingly.

(e) No order as to costs.

(**K. K. TATED, J.**)