

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2814 OF 2019
IN
FIRST APPEAL NO. 1221 OF 2014**

The Oriental Insurance Co. Ltd. ..Applicant

v/s.

Chhaya M. Sabale & Ors. ..Respondents

Mr.Sudhir Hardikar for the Appellant
Mr. D.S.Joshi for the Respondent no.1. Org. Appellant in FA.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 23rd AUGUST, 2019.**

P.C.

1. The applicants herein have sought withdrawal of the amount deposited by the appellant Insurance Company, pursuant to the judgment and award dated 6.1.2014 in MACP No.46 of 2011 passed by the learned Member of the MACT, Pune. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.52,32,410/- with interest @ of 6% per anum from the date of petition till final realization. The Tribunal has ordered to pay 35%

of the compensation to the applicant no.1, 25% each to the applicant nos.2 and 3 being children of the deceased and 15% to the applicant no.4-mother of the deceased.

2. The learned Counsel for the applicant states that earlier this Court had allowed the applicant no.1 to withdraw Rs.2 lakhs and interest accrued thereon, and the applicant nos.2 and 3 and the mother of the deceased were permitted to withdraw 50,000/- each. He states that during pendency of these proceedings, the applicant nos.2 and 3 have attained majority. They need money for their education as well as marriage purpose, as well as for their day to day expenses.

3. The learned Counsel for the respondent has stated that the appellant insurance company has challenged the impugned judgment and award on the ground of breach of terms and conditions of the policy and also challenged the quantum of compensation. He submits that the deceased was a Commerce Graduate and was conducting business along with his brother. He submits that after the death of the deceased, the business is continued by the applicant no.1 and that there is no total loss of income. He contends that the

Tribunal ought to have considered only managerial loss. He submits that the appellant-insurance company has a good case to succeed, and that the entire amount should not be allowed to be withdrawn.

4. Having considered the submissions advanced by the learned Counsel for the respective parties, as well as the reasons stated in the application, and the grounds raised in the memo of appeal, compensation of Rs.3,00,000/- (Rupees Three lakhs) each with appropriate interest accrued thereon is ordered to be paid to each of the applicants. Suffice it to say that the withdrawal is subject to final outcome of the appeal.

5. The applicants shall furnish an undertaking before the tribunal that they will abide by the final orders that may be passed in this appeal.

6. The MACT, to re-invest the balance amount in the names of the respective applicants, in any nationalized bank after making the payment as stated above.

7. Civil application stands disposed of.

Prasanna
P.
Salgaonkar

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by Prasanna P.
Salgaonkar
Date:
2019.08.27
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(ANUJA PRABHUDESSAI, J.)