

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2037/2019
IN
FIRST APPEAL (ST)NO.14526/2009

Vilas P. Tamore & Ors. ... Applicants.

AND

The United India Insurance Co.Ltd. ... Appellant.

Vs.

Vilas P. Tamore & Ors. Respondents.

Mr. T.J. Mendon, advocate for applicant.

Mr.S.S. Vidyarthi, Advocate for Appellant.

CORAM : K.K.TATED, J.

DATED : JUNE 17, 2019.

P.C.

Heard learned counsel for parties.

2. By this civil application, the applicant/claimant is seeking permission to withdraw amount deposited by appellant/Insurance Company to satisfy judgment and award dated 29.11.2006 passed by Motor Accident Claim Tribunal in Application no.3658/1994.

3. Learned counsel for applicant submits that, in an accident which occurred on 29.5.1994, applicants lost their

son Hitesh. At that time he was just 11 years old and was taking education. He submits that now both applicants are senior citizen. They do not have any source of income. Hence, applicant may be permitted to withdraw the amount deposited by Insurance Company during pendency of first appeal. If application is not allowed, irreparable loss would be caused to applicants.

4. On the other hand, learned counsel for Appellant/Insurance Company vehemently opposed the application. He submits that, in the present proceeding, the Tribunal erred in coming to conclusion that the Insurance Company is liable to pay the compensation. He submits that on the date of accident, the offending vehicle was not insured with Insurance Company. Therefore, there is no question of making payment to the claimants. He submits that, they have good chance of success in the present proceeding. If the entire amount is withdrawn by claimant without furnishing any security and in case company succeeds in the present proceeding then, it will be very difficult for appellant to recover the amount from the claimants. Therefore, there is no question of allowing the application to withdraw the amount. Application should be dismissed.

5. Heard both sides at length. It is to be noted that, in an accident, which occurred on 29.5.1994 applicants lost their son aged about 11 years. At present, both the applicants are senior citizens and they do not have any source of income.

6. Considering these facts I am of the opinion that both the claimants can withdraw 25% amount each without furnishing any security subject to outcome of first appeal.

7. Hence, the following order.

a) Claimant no.1 Mr.Vilas Pandurang Tamore and claimant no.2 Mrs.Minaxi Vilas Tamore are permitted to withdraw 25% of the entire compensation with interest each, without furnishing any security but subject to outcome of first appeal.

b) The Tribunal is directed to invest the remaining amount in a Fixed Deposit in any Nationalized bank, initially for a period of one year and thereafter same be continued till further orders.

c) Civil application is disposed of.

d) No order as to cost.

(K.K.TATED, J.)

