

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 CIVIL APPLICATION NO.1299 OF 2020 IN
FIRST APPEAL NO.3128 OF 2019

MADHURI JAIKUMAR KULKARNI AND ORS
VERSUS
THE ORIENTAL INSURANCE CO. LTD., THR ITS DIV.
MANAGER, AURANGABAD

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Mr.K.B. Jadhav, Advocate for applicants.
Mr.U.S. Malte, Advocate for respondent no.1.

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CORAM: V.L. ACHLIYA,J.
DATE : 04.02.2020

ORAL ORDER:

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

2. Heard learned counsel for applicants- claimants and Advocate representing the respondent no.1 - insurance company. Perused the judgment and award.

3. Learned counsel for the appellant - insurance company opposed the application with contention that the appellant has good case to succeed in appeal on merit. It is submitted that the claim is excessive and the award has been passed without proper evidence

adduced to award the compensation of Rs.16,67,889/-. It is submitted that without any proof of income, the Tribunal has assessed the compensation by treating the notional income as Rs.6000/- per month. It is further submitted that the amount of Rs.9,80,869/- has been awarded under the head of medical expenses. It is submitted that the bill of expenditure produced and relied upon raises serious doubt about genuineness of the bills produced in evidence. Some of the bills are signed by none else than the daughter of the claimants, who is now party to the appeal. She has signed the bills as Pharmacist in the shop working in one of Medical Shop. Some of the bills which have been produced and relied upon in the evidence are from the places other than place where the injured was treated.

4. On due consideration of submissions advanced in the light of challenge raised in appeal and further taking into consideration that the claimant has died after filing of this appeal and now the claimants are husband and one married and one unmarried daughter of the injured, the following order is passed :-

ORDER

(i) The applicants are permitted to withdraw the amount to the extent of 50% of the amount deposited. Out of 50% of amount, the 75% of the amount be paid to applicant no.1 and 25% of the amount be paid to applicant no.3.

(ii) The amount be paid to the applicant nos.1 and 3 in the above terms on furnishing the written undertaking that in the event award is set aside or modified, the applicant nos.1 and 3 shall refund the amount within four weeks from the date of passing of order.

(iii) After payment of 50% amount in above terms, the balance amount be invested in the names of applicants with any Nationalized Bank initially for a period of two years with standing instructions to renew the same till further orders from the Court.

(iv) The order of withdrawal of amount shall be subject to final outcome of the Appeal.

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

[V.L. ACHLIYA]
JUDGE