

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

915 CIVIL APPLICATION NO.1738 OF 2020
IN FAST/6842/2018

KAVITA ASHOK THORE AND OTHERS
VERSUS
RAFIQ UNSAR PATHAN AND OTHERS

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Advocate for Applicants : Shri Markad Dattraya R.

Advocate for respondent no.2: Shri D.S. Kudale

Advocate for Respondent no.3 : Shri S.G. Chapalgaonkar

Advocate for Respondent no. 5 : Shri S.R. Patil h/f Shri A.G. Kanade

CORAM: V.L. ACHLIYA, J.

DATE: 12.02.2020

PER COURT :

1] The applicants have moved this application seeking permission to withdraw amount of Rs.21,79,059/-.

2] Heard learned counsel for the applicants - claimants and respondent nos.2,3 & 5.

3] In brief, it is the contention of appellant - insurance company that the appellant has good case to succeed in appeal on merits. The deceased was traveling as a gratuitous passenger in a goods vehicle. The risk of the deceased was not covered under the terms of policy. By allowing carriage of passengers, the owner of the vehicle committed breach of policy condition and on that ground also, the appellant - insurance company is not liable to pay

compensation. It is further submitted that the compensation awarded is too much on higher side. No evidence was adduced to prove the case that the deceased was driver by profession and holding requisite license to drive the transport vehicle. Neither any document was produced to show occupation of the deceased nor the employer of the deceased was examined. Still the Tribunal has held that the deceased was driver by profession and assessed the compensation.

4] On due consideration of the submissions advanced in the light of challenge raised in the appeal, I am of the view that the order in following terms would meet the ends of justice.

ORDER

A] The applicant no.1 – Smt.Kavita w/o Ashok Thore is permitted to withdraw amount to the extent of Rs.1,00,000/- (rupees one lakh only) on furnishing undertaking that in the event the award is set aside or modified, the applicant no.1 – Smt.Kavita shall refund the amount within four weeks.

B] After making payment of Rs.1,00,000/- to applicant no.1, balance amount be invested in fixed deposit initially for a period of two years with standing instructions to renew the same till further orders from the Court. The

interest accrued over the fixed deposit be paid to the applicant no.1 - Smt.Kavita after regular interval of three months by transferring the amount in her savings bank account for the purpose of maintenance of herself and maintenance of two minor children i.e. applicant nos.2 and 3.

C] In the event the applicant no.1 - Smt.Kavita remarries or deserts the applicant nos.2 & 3, the order of payment of interest shall stand withdrawn with immediate effect.

D] Withdrawal of amount of Rs.1,00,000/- and payment of interest over fixed deposit to applicant no.1 shall be subject to final outcome of the appeal.

E] Application is disposed of in above terms.

(V.L. ACHLIYA, J.)