IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 CIVIL APPLICATION NO.3152 OF 2020
IN FIRST APPEAL NO.3906 OF 2019
…
MANGALBAI EKNATH HARBAK & ANOTHER
VERSUS
NEW INDIA ASSURANCE CO.LTD. AND OTHERS
…
Mr.M.R.Sonawane, Advocate holding for Mr.K.B.Jadhav, Advocate for the applicants.
Mr.S.G.Chapalgaonkar, Advocate for the respondent no.1
Mr.V.A.Bagal, Advocate for the respondent no.3.
…

CORAM : V.L.ACHLIYA,J.
DATE : 25.08.2020

P.C.

1] The applicants–claimants have moved this application seeking withdrawal of the amount deposited by the appellant-Insurance Company.

2] Heard learned counsel for the applicants and the counsel representing the appellant-Insurance company.

3] In brief, it is the contention of the learned counsel for the appellant –

Insurance Company that the judgment and award passed by the Tribunal is not sustainable in law. The appellant has taken a specific plea that vehicle insured with the appellant was not involved in the accident. The First Information Report was lodged 6 days after accident. The alleged eye witness examined the case to establish the involvement of the vehicle in the accident is close relative of the claimants. The alleged eye witness is brother-in-law of the deceased. It is further submitted that the appellant–Insurance company has made application to examine the driver of the vehicle. Though summons was served, the driver has failed to appear. The application seeking issuance of bailable warrant was rejected by the Tribunal. The petitioner has filed Writ Petition challenging the order. In the meantime, the claim petition was decided and Writ Petition was become infructuous. In this background, learned counsel submits that the appellant has good case to succeed in appeal. If the amount is allowed to be withdrawn, very purpose of filing of Appeal would be frustrated.

4] On the other hand, learned counsel for the applicants–claimants supported the judgment and award passed by the Tribunal. It is submitted that the Tribunal has duly considered the plea raised by the appellant–Insurance Company. The appellant–Insurance Company has not examined any witness to prove its defence. The Tribunal has relied upon the testimony of eye witness and Investigating Officer to prove the involvement of the vehicle. In that view, there is no merit in the Appeal preferred by the appellant.

5] On due consideration of the submissions advanced and the challenge raised in appeal, the following order will meet the ends of justice :

ORDER

i] The applicant no.1 is permitted to withdraw the amount to the extent of Rs.2,00,000/- [Rs.Two Lac only], on furnishing undertaking to the effect that in the event award is set aside / modified, the applicant no.1 shall re-deposit the amount within eight [8] weeks from the date of passing of order by this Court.

ii] After making payment of Rs.2 lac to applicant no.1, balance amount be invested in Fixed Deposit initially for a period of three years with any Nationalized Bank with standing instructions to renew the same till further orders or till disposal of appeal whichever is earlier till further orders from this Court.

iii] The interest accrued over the amount invested in Fixed Deposit be paid to the applicant no.1 after every six [6] months by transferring the amount in her saving account.

iv] The order of withdrawal of the amount and payment of interest to applicant no.1 shall be subject to the final outcome of the Appeal.

v] Civil Application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC