

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 CIVIL APPLICATION NO.5723 OF 2020 IN
FIRST APPEAL (STAMP) NO. 20635 OF 2018

PYARIBI W/O AHMED KHAN PATHAN AND OTHERS
VERSUS
ORIENTAL INSURANCE COMPANY LTD., AND ANR.

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Mr.A.M. Hajare, Advocate for applicants.
Mr.U.S. Malte, Advocate for the respondent
no.1.

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CORAM : V.L.ACHLIYA,J.
DATE : 11.12.2020

ORAL ORDER :

. The applicants – claimants moved this application seeking withdrawal of amount for the reasons set out in detail in the application.

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

3. Mr.Malte, learned counsel for the appellant-insurance Company opposed the application with contention that the appellant has good case to succeed in appeal. There was breach of policy condition on the part of the owner/insured. The vehicle was

registered for private carriage. At the time of accident, the same was found to have been used for carrying passengers as fare paying passengers. It is submitted that in case the award is set aside, it will be difficult to recover the amount if the applicants are allowed to withdraw the amount.

4. On the other hand, learned counsel for the applicants-claimants submitted that the appeal filed is devoid of merit. The vehicle in question is Auto rickshaw meant for carriage of passengers. So also the risk of the passengers in Auto Rickshaw was fully covered under the policy issued by the appellant – insurance company. Even it is presumed that there was breach of policy condition, still the insurance company is liable to pay the amount and recover the same from the owner/insured.

5. On due consideration of submissions advanced in the light of challenge raised in the appeal, I am of the view, the order in following terms would meet the ends of justice. Hence the following order :-

ORDER

(i) The applicant no.1 is permitted to

withdraw the amount of Rs.1,50,000/- on furnishing written undertaking to the effect that if the award is set aside or modified, the applicants shall redeposit the amount within eight weeks from the date of passing of the order.

(ii) After making the payment of Rs.1,50,000/- the balance amount be invested in Fixed Deposit with any Nationalized Bank, if not invested.

(iii) The interest accrued over the amount invested be credited in the Savings Bank Account of applicant no.1 after every three months so as to enable the applicant no.1 to maintain herself as well as maintain her minor children.

(iv) The order of withdrawal of amount and payment of interest shall be subject to final outcome of the appeal.

(v) The application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE