

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO.3923 OF 2020
IN FIRST APPEAL [STAMP] NO.21918 OF 2019

...
SEEMA SACHIN PATIL & OTHERS
VERSUS
SHRIRAM GENERAL INSURANCE CO. LTD. AND OTHERS

...
Mr.Avinash D. Hande, Advocate of the
applicants – claimants.
Mr.V.N.Upadhye, Advocate for the appellant –
Insurance Company.

...
CORAM : V.L.ACHLIYA,J.
DATE : 18.12.2020

P.C.

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

2] Learned counsel for the appellant – Insurance Company opposed the application with contention that there was breach of policy conditions on the part of the insured and at the relevant time of the accident, the deceased was traveling in goods vehicle as fare paying passenger. It is submitted that

in terms of the policy, risk of the deceased was not covered. So also the insured has committed breach of policy condition by allowing the fare paying passenger to board and travel as passengers in goods vehicle. It is submitted that the vehicle was plied in contravention of the terms and conditions of the policy. The appellants have good case to succeed in appeal. In case the amount is disbursed, the purpose of filing of appeal would be frustrated.

3] On the other hand, leaned counsel for the applicants – claimants supported the judgment and order passed by the Tribunal. He submits that the Tribunal has framed specific issue no.3 casting burden upon appellant to prove breach of policy condition. The Tribunal has specifically observed that no breach of policy condition has been proved on the part of the appellant – Insurance Company and the deceased was travelling along with his goods under transportation.

4] On due consideration of the submissions advanced, I am of the view that the following order would meet the ends of justice :

ORDER

i] The applicant nos.1, 5 and 6 are permitted to withdraw the amount to the extent of Rs.5 lac out of the amount deposited.

ii] Out of amount of Rs.5 lac, the amount of Rs.3 lac be paid to the applicant no.1 and the amount of Rs.2 lac be paid to applicant nos.5 and 6 in equal proportion. The amount be paid to the applicant nos.1, 5 and 6 subject to filing of undertaking that in the event award is set aside or modified, they shall re-deposit the amount within eight [8] weeks from the date of passing of the order. The amount be paid by way of transfer in savings bank accounts of applicant nos.1, 5 and 6.

iii] After making the payment of Rs.5 lac, the balance amount be invested in fixed deposit with any Nationalized Bank till disposal of the Appeal. The interest accrued over the amount invested in fixed deposit shall be paid to the applicant no.1 till disposal of the Appeal or further order

whichever earlier after the period of every three [3] months by transferring the amount in her savings bank account to be utilized for maintenance of herself and her minor children i.e. applicant nos.2 to 4.

iv] The withdrawal of the amount as well as payment of interest shall be subject to outcome of appeal.

v] The application is disposed in above terms.

[V.L.ACHLIYA]
JUDGE

DDC