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

911. CIVIL APPLICATION NO.6652 OF 2020
IN FIRST APPEAL NO.1135 OF 2007

…

MADHURI GAJANAN SAWANT & ANOTHER
VERSUS
M/S.NEW INDIA ASSURANCE CO.LTD. & OTHERS

…

WITH

CIVIL APPLICATION NO.7101 OF 2020
IN FIRST APPEAL NO.1136 OF 2007

…

VANMALA BALASAHEB BHOSALE & OTHERS
VERSUS
M/S.NEW INDIA ASSURANCE CO. LTD. & OTHERS

…

Mr.V.A.Bagal Patil, Advocate for the applicants-claimants
Mr.V.N.Upadhye, Advocate for the appellants – Insurance Company.

…

CORAM : V.L.ACHLIYA,J.
DATE : 09.12.2020

P.C.

1] Both these applications are filed by the applicants – claimants in respective Appeals for withdrawal of the amount in view of disposal of the appeals.

2] Heard learned counsel for the applicants – original claimants and the

Advocate representing the appellants – Insurance Company.

3] In brief, it is the contention of the learned counsel for the applicants – claimants that First Appeals preferred by the appellants – Insurance Company challenging the award passed by the Tribunal came to be dismissed vide judgment and order dated 27.02.2020 passed by this Court. The judgment and award passed by the Tribunal directing the appellants – Insurance Company to pay the amount of compensation and recover the same from insured has been upheld by this Court. In view of the disposal of the appeals, the applicants – claimants are entitled to withdraw the amount deposited by the appellants – Insurance company.

4] Mr.Upadhye, learned counsel for the appellant – Insurance company submits that before release of amount to the claimants, the owner of the vehicle be directed to furnish security for the amount to which the appellant – Insurance Company required to pay in terms of the award passed by Tribunal and further pass the order of attachment of vehicle. In support of the submission advanced, learned counsel referred decision in the case of ***Pramod Kumar Agrawal and other Vs. Smt. Mushtari Begum and others*** reported in ***AIR 2004 SC 4360.***

5] Learned counsel for the applicants – claimants submits that the interest of the appellant – Insurance Company is already protected in terms of the award passed by the Tribunal. The Tribunal has passed the order directing the appellant – Insurance Company to pay amount in terms of the award in the first instance and then recover the same from the respondent i.e. insured. It is submitted that in terms of the order passed the appellant – Insurance Company can file execution to recover the amount from the owner – cum - insured of the vehicle involved in the accident.

6] In my view, decision in the case of ***Pramod Kumar Agrawal and other Vs. Smt. Mushtari Begum and others*** reported in ***AIR 2004 SC 4360*** have no bearing upon the facts of the case. In the case referred, the Tribunal has dismissed the claim against Insurance Company by holding that the vehicle was plied in breach of policy condition and at the relevant time of the accident, the passengers were carried in goods vehicle for hire and reward. The judgment and order passed by the Tribunal was upheld in First Appeal preferred before the Hon'ble High Court. In the matter carried to the Hon'ble Apex Court, the Hon'ble Apex Court upheld the decision of the Tribunal as well as the High Court. By referring the decision in the case of ***M/s.National Insurance Co.Ltd. Vs. Baljit Kaur and others*** reported in ***AIR 2004 SC 1340***, the Hon'ble Apex Court has passed the order to pay and recover. In the said judgment, the Hon'ble Apex Court has held that once the order to pay and recover is passed; it would not be necessary for the insurer to file a separate suit for recovery of amount and order to pay and recover passed in case can be executed by Insurance Company by filing execution proceedings to recover such amount from the insured under the strength of such award.

7] In the instant case, there is specific order of pay and recover passed by the Tribunal. The respondent no.4 Insurance Company has been directed to pay the amount of compensation in first instance and then recover the same from the respondent – owner – insured of the vehicle involved in the accident.

8] In view of pay and recover order, the appellant – Insurance Company can recover the amount from the owner by executing the award passed by the Tribunal and confirmed by this Court. The amount payable in terms of the award cannot be withheld by putting such onerous conditions. The issue of recovery of amount from insured is issue between Insurance Company and insured. The claimant is not concerned with such recovery process.

9] Learned counsel for the applicants – claimants submits that the appellant – Insurance Company can recover the amount from the owner–insured by executing award against the owner as he is having landed property. The applicants-claimants are ready to provide copy of 7/12 extract of the landed property of the respondent no.2A and 2B.

10] In view of the discussion made, I am of the view that no condition of obtaining security from the owner–insured to be imposed while releasing the amount. The appellants –

Insurance Company have remedy to recover the amount by filing execution against the owner – insured. I am, therefore, inclined to allow the applications. The applicants – claimants are permitted to withdraw the amount deposited with the Court along with interest accrued thereon till the date of payment of compensation. The amount deposited and invested with the Court be transferred to the concerned Tribunal to be treated as deposit made in respective claim petitions. On transfer of amount, the Tribunal is directed to pass appropriate order of payment of compensation to the claimants in terms of the award already passed in the matter.

11] Civil Applications are disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC