

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.10921 OF 2016
IN FIRST APPEAL NO.1365 OF 2016

SUNITA SATISH JADHAV AND ORS.
VERSUS
THE MANAGER, M/S SHRIRAM GENERAL INSURANCE
CO. LTD., AND ANR

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Mr.R.V. Gore, Advocate for applicants.
Mr.S.S. Dargad h/f Mr.S.G. Chapalgaonkar,
Advocate for respondent no.1

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CORAM: V.L. ACHLIYA, J.
DATE : 22.01.2020

ORAL ORDER:

The applicants-claimants have moved this application seeking withdrawal of amount of Rs.10,85,340/- deposited by the appellant-insurance company.

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

3. Learned counsel for the appellant - insurance company opposed the application with contention that the appellant has good case to succeed in appeal. It is submitted

that the accident was occurred in between two vehicles. Omni Car in which deceased was travelled hit the Stationary Truck lying parked by the side of road. It is submitted that the offence in relation to the accident was registered against the driver of Omni Car. The applicants-claimants have filed the claim application without making the driver and owner of Omni Car as party. The Tribunal though observed that the driver of Omni Car was responsible for cause of accident to the extent of 50%, the entire liability is fastened upon the appellant – insurance company. In this background, learned counsel submits that the appellant has good case to succeed in appeal.

4. On the other hand the learned counsel for the applicants-claimants submits that the appeal filed by the appellant is devoid of merit. It is submitted that the deceased was not contributed for the cause of accident. At the most, the case of composite negligence has been made out. In that view, the choice lies with the claimants to sue against both or any one of joint tortfeasors. Learned counsel therefore referred and relied upon the decision of the Apex Court in the

case of *Khenyei V/s New India Assurance Co. Limited and others* reported in (2015)9 SCC 273, wherein the Apex Court has laid down the principles in case of composite negligence.

5. On due consideration of submissions advanced, the following order would meet the ends of justice :-

ORDER

(i) The applicant no.1 is permitted to withdraw the amount of Rs.1,85,340/- deposited by the appellant-insurance company on furnishing the written undertaking that in the event award is set aside or modified, the applicant no.1 shall refund the amount within four weeks from the date of passing of order.

(ii) After making payment of Rs.1,85,340/- the balance amount of Rs.9,00,000/- (Rs.Nine Lakhs) be invested in equal proportionate in the names of applicant nos.1 to 5 with any Nationalized Bank initially for a period of two years with standing instructions to renew the same till further orders from the Court.

(iii) The interest accrued over the amount invested in the names of applicants be directly credited in the Saving Account of

applicant no.1 after every three months so as to enable the applicant no.1 to maintain herself as well as maintain applicant nos.2 to 5.

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

(v) The Civil Application is disposed of in above terms.

[V.L. ACHLIYA]
JUDGE

SGA