IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 CIVIL APPLICATION NO. 7976 OF 2020
IN
FAST/14347/2020

VAISHALI BHAIYYASAHEB DENGALE AND ORS
VERSUS
NATIONAL INSURANCE CO. LTD., THR ITS BRANCH MANAGER AND ORS

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Mr. S.S.Manale, Advocate for applicants.
Mr. A.S.Usmanpurkar, Advocate for R – 1.

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CORAM : V.L.ACHLIYA, J.
DATE : 03/12/2020

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ORAL ORDER :

1. Learned counsel for applicants undertake to remove office objections within one week.

2. The applicants/claimants have moved this application seeking withdrawal of amount deposited by the appellant.

3. Heard learned counsel for applicants and learned counsel representing the respondent/Insurance company. Perused the Award.

4. It is the contention of learned counsel for appellant/Insurance company that the Award passed by the Tribunal is not sustainable in law. It is

submitted that there was breach of policy condition on the part of owner/insured. The vehicle in question was driven by the driver without effective and valid driving licence being in force on the date of accident. The licence was renewed after the date of accident. It is further submitted that accident was taken place in the mid of road. The deceased was equally responsible for causing the accident. The aspect of contributory negligence has not been taken into consideration by the Tribunal while passing Award. It is further submitted that the compensation awarded is excessive and not sustainable in law.

5. On the other hand, learned counsel for applicants supported the Judgment and Award passed by the Tribunal and submitted that the challenge raised in the Appeal are without any evidence adduced on the part of Insurance company to prove the breach of policy condition. It is submitted that deceased was Cook by profession. The Tribunal has determined the compensation by considering the income of the deceased as Rs. 12,000/- per month. In that view, the compensation can not be termed as excessive.

6. On due consideration of the submissions advanced in the light of overall facts of the case and the challenges raised in Appeal, I am of the view the order in following terms would meet the ends of

justice.

Hence, the following order.

ORDER

[i] Out of the amount of Rs. 29,82,416/- deposited by appellant/Insurance company, the applicants/claimants are permitted to withdraw the amount to the extent of Rs. 7,00,000/- [Rupees Seven Lakh].

[ii] Out of Rs. 7,00,000/- [Rupees Seven Lakh], the amount of Rs. 4,00,000/- [Rupees Four Lakh] be paid to applicant No. 1 and Rs. 1,50,000/- each be paid to applicant Nos. 4 and 5.

[iii] After making the payment of Rs. 7,00,000/- [Rupees Seven Lakh] to applicant Nos. 1,4 and 5, the balance amount be invested in Fixed Deposit with State Bank of India initially for a period of two years with standing instructions to renew the same till further orders from this Court. The interest accrued over the amount be paid to applicant No. 1 after the regular interval of three months by transferring the amount in her saving bank account to be utilized for maintaining herself and for maintenance of her minor children i.e. applicant Nos. 2 and 3 and dependent claimants i.e. applicant Nos. 4 and 5.

[iv] The withdrawal of amount and payment of interest shall be subject to outcome to Appeal.

[v] The amount be paid to applicant Nos. 1, 4 and 5 on furnishing written undertaking that in the event the Award is set aside or modified, the applicants shall re-deposit the amount within eight weeks from the date of such order.

7. The application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP