IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

948 CIVIL APPLICATION NO.11244 OF 2018
IN FA/2108/2018

VIJAYMALA MUNJAJI KARHALE AND OTHERS
VERSUS
HDFC ERGO GENERAL INSURANCE CO. LTD. THROUGH ITS MANAGER AND ANOTHER
...
Advocate for Applicants : Shri Kale Mahesh P.
Advocate for Respondent no.1 : Shri S.G. Chapalgaonkar

CORAM: V.L. ACHLIYA, J.

DATE: 10.01.2020

PER COURT :

1] The applicants – claimants have moved this application seeking withdrawal of the amount of Rs.7,38,899/- deposited by the appellant – insurance company in terms of the award passed.

2] Shri S.G. Chapalgaonkar, learned counsel for the appellant submits that the judgment and award passed by the Tribunal is unsustainable in law. He submits that the Tribunal has accepted the defence of the appellant – insurance company that there was breach of policy condition and at the time of commission of accident, the vehicle in question was used for commercial purpose though it was registered and insured for agricultural purpose. It is further submitted that as per case of the appellant – insurance company, the deceased was traveling by the vehicle involved in the accident and the risk of the deceased was not covered under the terms of the policy. In the light of challenged raised, the learned counsel submits that the appellant has good case to succeed on merits and the order of pay and recover passed by the Tribunal is not sustainable in the facts and circumstances of the case.

3] On the other hand, learned counsel for the applicants – claimants submits that the Tribunal has passed the award after considering the defences raised by the appellant – insurance company. It is submitted that the Apex Court has ruled that in the event there is breach of policy condition, it is the *inter-se* dispute between the insurance company and the insured. The insurance company has to pay the amount and same can be recovered by insurance company from insured..

4] On due consideration of the submissions advanced in the light of challenge raised in the appeal, I am of the view that passing of following order would meet the ends of justice.

<u>O R D E R</u>

A] The applicant nos.1 to 3 are permitted to withdraw amount of Rs.50,000/- each on furnishing undertaking that in the event the award is modified or set aside, the applicant nos.1 to 3 shall re-deposit the amount within four weeks from the date of passing of such order.

B] After making payment of Rs.1,50,000/- (i.e. Rs.50,000/- each), balance amount be invested in the fixed deposit initially for a period of two years with standing instructions to renew the fixed deposit till further orders.

C] The interest accrued over the amount invested in fixed deposit be paid to the applicant no.1 after every three months by transferring the amount in her savings bank account for the purpose of her maintenance as well as applicant nos.2 & 3.

D] Civil application is disposed of in above terms.

(V.L. ACHLIYA, J.)