IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.8129 OF 2020
IN FIRST APPEAL NO.1660 OF 2020
…
SMT.MEERABAI PRAKASH PURBHI & OTHERS
VERSUS
THE BAJAJ ALLIANZ GENERAL COMPANY LTD. & ANOTHER

…
Mr.M.M.Bhokarikar, Advocate for the applicants-claimants.
Mr.S.G.Chapalgaonkar, Advocate for the respondent no.1.
…

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

P.C.

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

2] Heard learned counsel for the applicants–claimants and the advocate representing the appellant–Insurance company.

3] In brief, it is the contention of the learned counsel for the appellant–Insurance Company that award passed by the Tribunal is not sustainable in law. The appellant–Insurance Company has taken specific defence that there was breach of policy condition and driver of the vehicle was not holding valid and effective driving license to drive the vehicle on the date of accident. In order to establish defence the appellant–Insurance Company has summoned the RTO office. The RTO office has appeared before the Court along with requisite record. The Court has taken documents on record and expressed that no necessity to examine the witness. However, in the judgment delivered in the case the Tribunal has observed that the appellant–Insurance Company has failed to establish its defence. It is submitted that the accident has taken place in the year 2013. The license was not renewed. The license, which was expired in the year 2010, was not renewed till accident.

4] On the other hand, learned counsel for the applicants–claimants supported the judgment and award passed by the Tribunal and submits that the appellant–Insurance Company failed to discharge burden to prove breach of policy condition. It is submitted that the production of document on record itself not sufficient to read the documents in evidence.

No witness examined by the appellant–Insurance Company to prove its case.

5] On due consideration of the submissions advanced, I am of the view that there is arguable case in favour of the appellant–Insurance Company to be considered in Appeal in the facts of the case passing of order in following terms would meet ends of justice:

ORDER

i] The applicants - claimants are permitted to withdraw the amount to the extent of Rs.2,50,000/- subject to outcome of the Appeal on furnishing undertaking to the effect that in the event the award is set aside and modified the applicants – claimants shall re-deposit the amount in terms of order to be passed within eight [8] weeks from passing of such order.

ii] After making payment of Rs.2,50,000/- to the applicant no.1, balance amount be invested and interest accrued over the said amount be paid to the applicant no.1 after every three months by transferring the same in her savings account to be utilized for herself and her minor children.

iii] The payment including interest be made to the applicant no.1 on furnishing undertaking.

iv] Civil Application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC