IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

938 **CIVIL APPLICATION NO.13057 OF 2019**
IN FAST/4850/2019

ANITA NARAYAN AAGALE AND ORS
VERSUS
SHRIRAM GENERAL INSURANCE CO. LTD., THR ITS BRANCH MANAGER, AURANGABAD 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-appellants have moved this application seeking withdrawal of amount of Rs.19,84,226/- deposited by the appellant-insurance company.

2. Heard learned counsel for the applicants-claimants and Advocate representing the respondent no.1 - insurance company. Though the respondent no.2 served and represented through Advocate, absent.

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 deceased was 19 years old and riding the motorcycle with three persons. As per the spot panchanama accident was occurred in the middle of road. The spot panchanama clearly indicates that the accident had occurred due to sole negligence on the part of the deceased. While assessing the evidence, the Tribunal has failed to consider the case of contributory negligence. It is further submitted that the compensation assessed is on higher side and contrary to the decision in the cases of ***Sarla Varma and others V/s Delhi Transport Corporation and others***, reported in ***2009(6) SCC 121*** and ***National Insurance Company Ltd., V/s Pranay Sethi*** and others reported in ***2017(16) SCC 680.*** By referring the judgment and order, the learned counsel submits that the monthly income of the deceased has been computed at the rate of Rs.7000/- per month without any proof of income being produced. It is further submitted that the deceased was bachelor. The deduction to the extent of 50% ought to have been considered towards personal expenses. However, the Tribunal has considered the deduction to the extent of 1/3rd. It is further submitted that the Tribunal has added

50% of amount towards future prospects by taking the case as it covered by clause 59.3 of the judgment in the case of **Pranay Sheety (supra).** It is submitted that the deceased was not salaried person having no fix income still 50% added income added towards future prospects.

4. On the other hand, learned counsel for the applicants-claimants support the judgment and order and submits that the Tribunal has thoroughly considered the evidence and assessing the compensation as per settled position in law.

5. On due consideration of submissions advanced, I am of the view that there is arguable case has been made to entertain the appeal. The spot panchanama clearly indicates that the accident was occurred at the middle of road. The deceased was claimed to be riding the motorcycle. There were in all three persons proceeding on the motorcycle at the time of accident. The deceased was not employed as regular salaried person with fixed income. The calculations made by the Tribunal in assessing the compensation appears to be not in accordance with the

settle position in law. In that view, the appellant has good case to succeed in the appeal. I am therefore inclined to allow the application. Hence the following order :-

ORDER

(i) The applicants are permitted to withdraw the amount of Rs.4,84,226/- deposited by the appellant-insurance company on furnishing the written undertaking that in the event award is set aside or modified, the applicants shall refund the amount within four weeks from the date of passing of order.

(ii) Out of Rs.4,84,226/-, the amount of Rs.2,25,000/- each be paid to applicant nos.1 and 2 and balance amount of Rs.34,226/- be paid to applicant no.4.

(iii) After making payment of Rs.4,84,226/-, the balance amount of Rs.15,00,000/- (Rs.Fifteen Lakhs) be invested with any Nationalized Bank initially for a period of two years with standing instructions to renew the same till further orders from the Court.

(iv) 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 4.

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

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

[V.L. ACHLIYA]
JUDGE

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