

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.12123/2019
IN FIRST APPEAL NO.1421/2019

SUMAYYABI SHABIR BAGWAN & OTHERS.
VERSUS
SBI INSURANCE CO. THROUGH ITS MANAGER, AURANGABAD
AND ANOTHER.

.....
Shri M.M. Bhokarika, Advocate for applicants.
Shri S.S. Patil, Advocate for respondent no.1.
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CORAM: V.L. ACHLIYA, J.

DATE: 21.08.2020

PER COURT :

1] The applicants - claimants have moved this application seeking withdrawal of amount.

2] Heard learned counsel for the applicants and respondent no.1 - insurance company. Perused the order passed by the Tribunal.

3] In brief, it is the contention of learned counsel for the appellant - insurance company that the appellant has good case to succeed in appeal. The deceased was traveling in a goods vehicle as a passenger. The risk of gratuitous passenger was not covered under the terms of policy. There was breach of policy condition on the part of insured. Except the bare word that the deceased was traveling alongwith goods, no cogent and convincing evidence was adduced on the part of claimants to establish that the deceased was

traveling as owner of the goods and for safety of the goods.

4] On the other hand, learned counsel for the applicants - claimants submits that the Tribunal has thoroughly analyzed the evidence adduced in the case and there is no merit in the appeal.

5] On due consideration of the submissions advanced, I am of the view that the appellant has an arguable case to be considered in the appeal. Considering the overall facts of the case, passing of order to following effect would meet the ends of justice. Hence, the following order.

ORDER

A] The application is partly allowed.

B] The applicants are permitted to withdraw amount to the extent of Rs.3,00,000/- out of the amount deposited by the appellant - insurance company. The amount of Rs.3,00,000/- be paid to the applicant no.1 for herself and for her minor children.

C] After making payment of Rs.3,00,000/-, balance amount be invested with State Bank of India in fixed deposit initially for a period of three years with standing instructions to renew the same till further orders from this Court.

D] Till further orders or final disposal of appeal,

whichever is earlier, the interest accrued over the amount invested in fixed deposit be paid to applicant no.1 after interval of every three months for her own maintenance as well as maintenance of her children i.e. applicant nos.2 to 4.

E] The amount of Rs.3,00,000/- as well as interest accrued over the amount invested in fixed deposit be paid to applicant no.1 by transferring the amount directly to her savings bank account on furnishing written undertaking to the effect that in the event the award is set aside or modified, the applicant no.1 shall re-deposit the amounts withdrawn within eight weeks from the date of passing of such order by this Court.

F] Withdrawal of amount of Rs.3,00,000/- as well as payment of interest shall be subject to final outcome of the appeal.

G] The application is disposed of in above terms.

(V.L. ACHLIYA, J.)