

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 CIVIL APPLICATION NO.1075 OF 2020
IN FA/325/2015

KAMALBAI SUDHAKAR BIRHADE AND OTHERS
VERSUS
NATIONAL INSURANCE CO. LTD. AND ANR

Mr.Shaikh Mohammad Naseer, Advocate for the applicants.
Mr.A.B. Gatne, Advocate for respondent No.1-absent.

CORAM : V.L.ACHLIYA,J.
DATED : 17.12.2020

P.C. :-

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

02. Heard learned counsel for the applicants-claimants. The advocate representing respondent No.1 is absent. On previous date the learned advocate for respondent No.1 appeared and submitted that copy was not furnished to him. Notice of hearing was not given to him by the applicants in terms of Standard Operating Procedure. The learned counsel for the applicants submits that copy is duly furnished to the learned advocate with intimation to him that the matter has been posted for today.

03. Perusal of the grounds of appeal spell out that the appellant-insurance company has disputed its liability to pay compensation primarily on the ground that the driver of the vehicle was not holding requisite licence to drive the vehicle involved in the accident and further the risk of labourers engaged on the vehicle in question was not covered under the terms of the policy.

04. According to learned counsel for the applicants the Tribunal has considered the defense raised by the appellant and held that the deceased being employed as a labour on the vehicle involved in the accident, there was no breach of policy condition and risk of the deceased was duly covered under term of policy. It is further submitted that the insurance company has not adduced evidence to establish its defense.

05. On due consideration of the submissions advanced and the challenge raised in the appeal, following order is passed :-

i) Applicant No.1 is permitted to withdraw the amount to the extent of Rs.1,00,000/- (Rupees One Lakh) on furnishing written undertaking to the effect that in the event the award is set aside or modified, the applicant shall re-

deposit the amount within eight weeks from the date of passing of such order.

ii) After making payment of Rs.1,00,000/- (Rupees One Lakh), balance amount be invested in fixed deposit in any nationalized bank, till disposal of appeal. The interest accrued thereon be paid to applicant No.1 with regular interval of three months to be utilized for maintaining herself and her dependents i.e. claimant Nos.2 to 5.

iii) Withdrawal of amount as well as payment of interest shall be subject to final outcome of appeal.

6. The application is disposed of in above terms.

[V.L.ACHLIYA,J.]