

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

953 CIVIL APPLICATION NO.15160 OF 2019
IN FA (STAMP) NO.37308/2018

NAZIYA MEHMOOD PATHAN AND ORS.
VERSUS
ASHAVALI @ ASFAQ KHURSHID SHAIKH AND ANR.

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Mr.F.K. Patel, Advocate for applicants.
Mr.S.G. Chapalgonkar, Advocate for respondent
no.2.

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CORAM: V.L. ACHLIYA, J.
DATE : 10.01.2020

ORAL ORDER:

The applicants-claimants moved this application seeking withdrawal of amount of Rs.12,36,871/- deposited by the appellant-insurance company in terms of award passed by the Tribunal.

2. Heard learned counsel for the applicants and learned counsel representing the respondent no.2. Perused the judgment and award passed by the Tribunal.

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 first information report in respect of the accident was lodged 21 days after the incident. The report was lodged against unknown person. In the complaint lodged no particulars of the vehicle involved in the accident has been given. During the course of investigation, the statement of two persons were shown to be recorded, who in turn stated about the involvement of the vehicle. It is submitted that the evidence as gathered and produced raises serious doubt as to involvement of vehicle insured with appellant-insurance company. The injured and eye witness to incident not been examined by claimants. The witnesses examined to the incident itself raises serious doubt as their presence on spot and they are witnesses introduced to any how show the involvement of the vehicle in question and to claim compensation. In the background of challenge raised in the appeal, learned counsel submits that if the applicants are permitted to withdraw the amount, it will be difficult to recover the same in case appellant succeed in appeal.

4. On the other hand, learned counsel for the applicants-claimants support the

judgment and award passed by the Tribunal and submits that the appeal is devoid of merit. It is submitted that two eye witnesses examined in the case have categorically deposed about the involvement of the vehicle in accident. Investigating Officer also supported the case of the applicants-claimants. No evidence adduced on the part of the appellant-insurance company to establish that the vehicle has been falsely involved to claim compensation.

5. On due consideration of the submissions advanced in the light of order passed by the Tribunal, I am of the view that passing of order in following terms would meet the ends of justice :-

ORDER

(i) The applicant no.1 is permitted to withdraw the amount of Rs.1,00,000/- and applicant nos.6 and 7 are permitted to withdraw the amount of Rs.50,000/- each on furnishing written undertaking to that effect that in the event the award is set aside or modified, they shall redeposit the amount within four weeks from the date of passing of such order.

(ii) After making the payment of Rs.2,00,000/- to the applicant nos.1, 6 and 7, the balance amount be invested in fixed deposit with any Nationalized Bank initially for a period of two years with standing instructions to renew the same till further orders from this Court.

(iii) The interest accrued over the amount invested 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 applicant nos.2 to 8.

(iv) The order of withdrawal of amount and payment of interest shall be subject to final outcome of appeal.

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

[V.L. ACHLIYA]
JUDGE

SGA