

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

16 CIVIL APPLICATION NO.1163 OF 2020
IN FIRST APPEAL NO.2001 OF 2019

SANGITA NAMDEO THORE & OTHERS
VERSUS
BAJAJ ALLIANZ GENERAL INSURANCE CO.LTD.
AURANGABAD & OTHERS

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Mr.H.V.Tungar, Advocate for the applicants
Mr.S.S.Dargad, Advocate holding for
Mr.S.G.Chapalgaonkar, Advocate for the
respondent no.1.

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CORAM : V.L.ACHLIYA,J.
DATE : 03.02.2020

P.C.

1] The applicants—original claimants moved this application seeking withdrawal of amount of Rs.12,42,237/- deposited by the Insurance company.

2] Heard learned counsel for the applicants and the advocate representing the appellant—Insurance company. Perused the judgment and award passed by the Tribunal.

3] In brief, it is the contention of the appellant—Insurance Company that the

appellant has good case to succeed on merits. The accident was occurred on 23.08.2013. The First Information Report in respect of the accident was lodged on 25.08.2013 that too against unknown vehicle. By way of supplementary statement of Machindra, brother of deceased, got recorded in the case the vehicle in question has been shown to be involved in the accident. It is submitted that the Insurance Company has specifically denied the involvement of the vehicle and taken plea that claim petition has been filed in collusion with the owner and driver of the vehicle. The claim was investigated through Investigating Agency. In spite of issuance of summons to the Investigating Officer, the Investigating Officer failed to appear in the matter. No eye witness to the incident was examined. The witness no.1 for claimant has deposed in her cross examination that prior to recording of supplementary statement of Machhindra, the claimants and their relatives including owner of the vehicle had a meeting and in the meeting it was decided to show the involvement of the vehicle in question insured with appellant-Insurance Company. The Tribunal has overlooked this vital evidence.

4] On due consideration of the submissions advanced in the light of overall facts of the case, challenge raised in appeal and the judgment and award passed by the trial Court, I am of the view that the following order would meet the ends of justice:

ORDER

- i] The entire amount deposited by the appellant—Insurance Company be invested in Fixed Deposit for two years with any Nationalized Bank with standing instructions to renew the same till further orders.
- ii] Subject to outcome of appeal, the interest accrued over the amount invested in Fixed Deposit be paid to the applicant no.1 after every three months by crediting the amount in her saving account for maintaining herself and maintenance of applicant nos.2 to 4. On furnishing the undertaking that in the event the award passed by Tribunal is set

aside or modified and applicants are directed to refund the amount received as interest then same shall be deposited within four weeks from date of such order to be passed in appeal.

iii] Hearing of the appeal is expedited.

vi] Civil Application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC