

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

955 CIVIL APPLICATION NO.92 OF 2020
IN FA (STAMP) NO. 28338 OF 2019

PRARTHANA ASHOKRAO DESHMUKH AND ORS.
VERSUS
HDFC ERGO GENERAL INSURANCE CO. LTD. AND ANR.

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Mr.S.P. Salgar, Advocate for applicants.
Mr.S.G. Chapalgaonkar, Advocate for
respondent no.1.

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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.63,34,734/- 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.1. 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 appellant – insurance company has disputed the involvement of vehicle in question. It is submitted that the deceased was serving as a Police Constable. At the time of admission of deceased in hospital the history of the injury sustained by him was recorded in medico legal case papers. The deceased has disclosed that he sustained the injuries as the motorcycle on which he was riding skidded on road. The injured succumbed to injuries on 08.01.2017. On 09.01.2017, the wife of the deceased i.e. applicant no.1 filed complaint alleging the involvement of vehicle insured with the appellant-insurance company. It is submitted that the claimants have failed to establish the involvement of vehicle insured with the appellant-insurance company in an accident resulting accidental death of the deceased. The claim application has been filed in collusion with the respondent no.2 – owner-cum-insured to any how secure compensation

4. On the other hand, learned counsel for the applicants-claimants support the judgment and award passed by the Tribunal. He submits that the appeal preferred is devoid of merit. The applicants have duly proved by

examining the witness to the incident as well as Investigating Officer that the vehicle in question was involved in the accident. The charge-sheet has been filed against respondent no.2. The Tribunal has dealt the contentions raised by the appellant-insurance company while passing the judgment and award. It is submitted that the deceased was sole bread earner in his family. The applicant no.1 is the wife of deceased. Applicant nos.2 and 3 are the daughters of the deceased taking education. Applicant no.2 is studying in final year B.H.M.S. course. Applicant no.3 is studying in 2nd year B.D.S. course. Applicant no.4 is the mother of the deceased suffering from serious ailments and require to undergo regular treatment.

5. On due consideration of submissions advanced in the light of challenge raised in the appeal, I am of the view that passing of order in following term would meet the ends of justice :-

ORDER

(i) The applicant nos.1 to 4 are permitted to withdraw the amount of Rs.5,00,000/- each, on furnishing written undertaking to 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 order.

(ii) After making the payment of Rs.20,00,000/- (Rs.5,00,000/- each) to the applicant nos.1 to 4, 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. The amount be invested in equal proportion in the names of applicant nos.1 to 4.

(iii) The interest accrued over the amount invested in the names of applicant nos.1 to 4 be credited in their Saving Accounts after every three months.

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

(v) The applicant nos. 2 and 3 will be at liberty to make application seeking further withdrawal of amount in the eventuality the same is required for the purpose of prosecuting the education.

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

[V.L. ACHLIYA]
JUDGE

SGA