IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 3947 OF 2021
IN FIRST APPEAL NO.2147 OF 2020

BABY MANOHAR PAWAR AND OTHERS
VERSUS
M/S. ROYAL SUNDARAM ALLIANCE INSURANCE CO. LTD.
...
Advocate for Applicants : Mr. S. G. Chapalgaonkar
Advocate for Respondent No.1 : Mr. Vinayak Narayan Upadhye
...

CORAM : ANIL S. KILOR, J.

DATE : 9th APRIL, 2021

PER COURT :-

This is an application moved by the claimants in Motor Accident Claim Petition No. 248 of 2019, wherein, the learned Tribunal vide Judgment and Order dated 19-11-2019 granted compensation of Rs.1,10,00,000/-. The said Judgment and Award is under challenge in the present appeal at the behest of Insurance company.

2. I have heard learned counsels for the respective parties.

3. Mr. Chapalgaonkar, learned counsel for the appellant submits that the claimants were depending upon the income of deceased, who was working as teacher at the time of accident and he has pointed out that the issue of maintainability of the present appeal is also involved in the present matter as no leave

was sought under Section 170 of the Motor Vehicles Act, 1988, and therefore, this case is covered by the Judgment in the case of ***National Insurance Company Limited, Chandigarh Versus Nicolletta Rohtagi and others***[1]. It is, therefore, prayed that the applicants be permitted to withdraw the decreetal amount deposited by the Insurance company in this Court.

4. On the other hand, Mr. Upadhye, learned counsel for the Insurance company strongly opposes the application by filing reply on record.

5. Mr. Upadhye, learned counsel for the Insurance company is disputing the contention of the learned counsel for the applicants that no leave was sought in this matter by the Insurance company under Section 170 of the Motor Vehicles Act, 1988. He submits that since the amount is in Crore, if the application is allowed and the applicants are permitted to withdraw the amount in that case it will be difficult for the insurance company to recover the said amount in case the insurance company succeeds in the present appeal.

6. After going through the impugned Judgment and Award and after considering the rival contentions of the parties, at this stage, I am of the opinion that the justice would be subserved, if the applicants are permitted to withdraw 50% of the total amount deposited by the Insurance company; the 25% amount out of the

1 2002 Supp(2) SCR 456

same on furnishing undertaking and remaining 25% amount on furnishing surety to the satisfaction of the Registrar (Judicial) of this Court.

7. In the circumstances, I pass the following order :-

O R D E R

1. The application is partly allowed.
2. The applicants-claimants are permitted to withdraw 25% of the total amount deposited in this Court on furnishing undertaking that in case the Insurance company succeeds in the present appeal, the applicants would pay back / redeposit the said amount as directed by this Court within stipulated period.
3. The remaining 25% of the total amount deposited in this Court is permitted to be withdrawn by the applicants-claimants on furnishing surety to the satisfaction of the learned Registrar (Judicial) of this Court.
4. Registry is directed that the remaining 50% amount shall be invested in any nationalized bank initially for a period of two years and the said period would be extended in case the matter is not finally decided within such period.

(ANIL S. KILOR)
JUDGE

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