

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**940 CIVIL APPLICATION NO.1243 OF 2020
IN FAST/38001/2019**

**GANPAT GOPINATH GAIKWAD AND ORS
VS
THE ORIENTALINSURANCE CO. LTD. THR ITS BRANCH
MANAGER, AURANGABAD AND ANR**

Mr. Shrikant B. Madde, Advocate for the applicants
Mr. Dhananjay P. Deshpande, Advocate for the applicants

CORAM : N. J. JAMADAR, J.

DATE : 05-03-2021

P. C.

. This application is preferred by the applicants-ori. claimants seeking permission to withdraw the amount of compensation deposited by the appellant-ori.respondent No.2-insurer in terms of the judgment and award dated 21/06/2019, passed in WCA No.26/2018 by the learned Commissioner for Employee's Compensation & Judge, Labour Court, Latur. By the impugned judgment and award the appellant and respondent No.5-employer were ordered to pay the applicants, heirs of the deceased Radha, a lump-sum compensation of Rs.06,09,900/- alongwith interest @ 12% per annum from one month of the date of accident till realization. The employer-respondent No.1 was also directed to pay an amount of Rs. 30,495/- to the applicants by way of penalty. Being aggrieved, the insurer is in appeal.

2. The insurer-appellant has deposited the entire amount of compensation alongwith interest accrued thereon.

3. The applicants-respondents have preferred this application seeking permission to withdraw the amount with assertions that the applicants have no significant source of income.

4. The applicant No.1 is suffering from ailments and applicant Nos. 3 and 4 are minors. Thus, to support the necessities of life they are in dire need of amount of compensation deposited by appellant.

5. Learned counsel for the appellant resisted the prayer of withdrawal. It was urged that there is no nexus between the alleged accident and death which the deceased met on 12-12-2017. It was the case of the applicants that the deceased Radha suffered a snake bite on 29-10-2017 in the course of employment. However, from perusal of the observations of learned Commissioner in para 9 of the application it becomes evident that on 14-11-2017, for the first time, deceased came to be admitted in the hospital with the history of snake bite. Having regard to the time lag, according to the learned counsel for the appellant, the finding of the learned Commissioner that the deceased suffered death on account of snake bite, on 29-10-2017, during the course of employment, suffers from serious infirmity. It was further urged that the

appellant-insurer could not have been saddled with the liability to pay the interest. Thus, the applicant may not be permitted to withdraw the amount.

6. In contrast to this, the learned counsel for the applicant urged that the learned Commissioner has considered all the objections, which are now sought to be raised, and adjudicated the liability of the employer and insurer.

7. In the facts of the case, the submissions on behalf of the appellant-insurer cannot be said to be totally without substance. The crucial aspect as to whether death was the result of snake bite which the deceased suffered during the course of employment would warrant consideration. However, having regard to the situation in life of the applicants, the applicants cannot be deprived of the benefit of the amount of compensation awarded by learned Commissioner, totally. It would be expedient in the interest of justice to allow the applicants to withdraw a portion of the amount of compensation deposited by the appellant. Hence, the following order.

ORDER

- i. The application stands partly allowed.
- ii. The applicants are permitted to withdraw 50% of the amount of compensation deposited by the

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appellant-insurer, on furnishing an undertaking to bring back the amount of compensation in the event it is held that they are not entitled to the compensation, to the satisfaction of the learned Registrar (Judicial) of this Court.

iii. The balance 50% amount be invested in a fixed deposit.

iv. The application stands accordingly disposed of.

[N. J. JAMADAR, J.]