

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

CIVIL APPLICATION NO.7155 OF 2020
IN FIRST APPEAL [STAMP] NO.36728 OF 2019

...

SUNITA SUBHASH MANDGE & OTHERS
VERSUS
THE BRANCH MANAGER, IFCO TOKIO GENERAL
INSURANCE CO.LTD. & ANOTHER

...

Mr.D.A.Bide, Advocate for the applicants—
claimants.

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 : 03.02.2021

P.C.

1] The applicants have moved this
application seeking withdrawal of the amount
deposited by the appellant—Insurance company.

2] Heard learned counsel for the
applicants—claimants and the counsel
representing the appellant — Insurance
Company.

3] In brief, it is the contention of
the learned counsel for the appellant—
Insurance Company that the award passed by
the Tribunal is not sustainable in law. It is

submitted that in absence of evidence to prove the income of the deceased, the Tribunal has considered the monthly income of deceased as Rs.20,000/- per month in assessment of compensation. It is submitted that compensation awarded by the Tribunal is excessive. It is further submitted that the accident took place in the middle of the road while deceased was riding motorcycle and hit the vehicle which was insured with the appellant-Insurance Company. While passing the award by the Tribunal, the aspect of contributory negligence on the part of the deceased not considered. It is submitted that the appellant-Insurance company has good case to succeed in appeal.

4] On the other hand, learned counsel for the applicants – claimants support the judgment and order and submits that appeal filed is devoid of merits. The Tribunal has passed the judgment and award on due analysis of evidence adduced in the case.

5] On due consideration of the submissions advanced and the challenge raised in appeal, I am of the view that the following order would meet the ends of justice :

ORDER

i] The application is partly allowed.

ii] Out of the amount of Rs.25,65,258/- deposited by the appellant—Insurance Company, the applicant nos.1, 4 and 5 are permitted to withdraw the amount to the extent of Rs.13 lac. Out of Rs.13 lac, the amount of Rs.10 lac be paid to the applicant no.1 i.e. the wife of the deceased and Rs.1,50,000/- each to the applicant nos.4 and 5 [i.e. mother and father of the deceased].

iii] After making payment of Rs.13 lac, the balance amount be invested in Fixed Deposit initially for a period of three years with any Nationalized Bank with standing instructions to renew the same till further orders from this Court.

iv] The amount be paid to the applicant nos.1, 4 and 5 on furnishing undertaking to the effect that in the event award is set aside or modified, the applicant nos.1, 4 and 5 shall re-deposit the amount within eight weeks from the date of passing of the order.

v] The amount be paid to the applicant nos.1, 4 and 5 by transferring the same in their respective savings account as per the particulars of the Bank to be furnished by the applicant nos.1, 4 and 5.

vi] Civil Application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC