IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 CIVIL APPLICATION NO.3497 OF 2021
IN
FA/2101/2020

Shri Vijaykumar Deochand Patil & ors. ...APPLICANTS

VERSUS

The United India Insurance Company Ltd.,
Through The Divisional Manager,
Jalgaon & ors. ..RESPONDENTS

Mr M.M. Bhokarikar, Advocate for applicants;
Mr S.G. Chapalgaonkar, Advocate for respondent No.1;
Mr S.S. Jadhav, Advocate for respondent No.2

CORAM : RAVINDRA V. GHUGE
AND
S.G. MEHARE, JJ

DATE : 28th July, 2021

P.C.

1. By this application, the four original claimants pray for leave to withdraw the entire amount of Rs.56,19,709/- deposited by the appellant insurance company in this Court. This Court had passed an order on 22nd October, 2020 issuing notice to the respondents and subject to depositing of the entire amount, had granted protection to the appellant, by way of interim relief.

2. We have heard the learned Advocates for the applicants, the original appellant insurance company and respondent nos.2 to 4.

3. The appellant has raised it's grounds for appeal in the petition, as under:-.

a) The deceased had rammed a parked truck which was motionless due to a mechanical fault, from behind. As a consequence of such an accident, the death had occurred.

b) Element of contributory negligence was, therefore, involved.

c) The Divisional Manager of the insurance company had connived with claimant no.1 and had prepared a back dated insurance policy to indicate that the two wheeler used by the deceased was covered by an insurance scheme.

d) The said Divisional Manager is presently subjected to criminal investigation and it is stated that the C.B.I. has taken over the said investigation since a large scale racket of such nature was noticed.

e) Claimant no.1 is the father of the deceased, who was admittedly in employment and is presently drawing pension.

f) Claimant no.4 is an independent brother of the deceased, who is in employment and settled in life.

4. The learned Advocate for the applicants has stated that all the applicants pray for withdrawal of the entire amount that has been deposited.

The learned Advocate has chosen not to answer the Court's query as regards, whether appellant no.1, being in employment when the accident occurred and presently drawing pension and applicant no.4 being an independent person who is in employment, could be entitled to compensation?.

5. We have gone through the impugned judgment dated 3rd July, 2020 delivered by the learned Chairman, Motor Accident Claims Tribunal, Jalgaon in M.A.C.P. No.166 of 2010. We find that the learned Tribunal has taken into account the element of contributory negligence. It has also considered that applicant no.1 was in employment. However, the issue of an insurance policy having been drawn with retrospective effect showing it to be a back dated policy, has been held against the appellant. So also, without assigning reasons, all the claimants have been granted compensation.

6. In view of the above and to balance the equities, we are partly allowing this Civil Application with the following directions:-

a) Applicant no.1 Vijaykumar would be allowed to withdraw an amount of Rs.40,000/- as consortium amount by tendering an affidavit undertaking within 15 days in this Court.

b) Applicant no.2 Smt. Shailaja who is the mother of the deceased, would be permitted to withdraw Rs.7,00,000/- on an affidavit undertaking and an amount of Rs.7,00,000/- by tendering a solvent surety to the satisfaction of the learned Registrar (Judicial) of this Court.

c) The widow of the deceased Smt. Swati, applicant no.3 would be allowed to withdraw an amount of Rs.7,00,000/- on an affidavit undertaking and a further amount of Rs.7,00,000/- by tendering a solvent surety to the satisfaction of the learned Registrar (Judicial) of this Court.

d) Applicant no.4 Manish, for the present, would not be permitted to withdraw any amount.

e) The affidavit undertaking to be filed by applicant nos.1, 2 and 3 would mention, by way of an undertaking, that if the decision in the First Appeal is adverse to these applicants, they would deposit the withdrawn amount or the excess amount, within eight weeks from the date of such adverse decision.

[S.G. MEHARE, J.] **[RAVINDRA V. GHUGE, J.]**

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