IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

18 CIVIL APPLICATION NO.4742 OF 2021
IN FA/30/2021

SWATI WD/O ANIL DAUND AND ORS
VERSUS
KAKASAHEB S/O NARAYAN WABALE AND OTHERS
...
Advocate for Applicants : Mr. A. A. Mukhedkar h/f Mr. Khedkar A. P.
Advocate for Respondent No.1 : Mr. G. J. Kore and V. R. Jadhav.
...

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 21-06-2021

PER COURT :

1. Heard both sides.

2. Learned Advocate for the insurance company – original appellant submits that the appeal has been filed mainly on two grounds, one is contributory negligence and another is breach of terms of policy. The third ground which he would try to canvass is the quantum. He submits that the deceased was driving one of the car and it was head on the collusion, yet the contributory negligence has not been held by the Tribunal. So also in order to prove the breach of terms of policy, the insurance company has led evidence which has not been properly considered.

3. Taking into consideration the challenge that has been made,

there is no hurdle in allowing partial withdrawal of the amount. At this stage important point to be noted is that the total compensation that was awarded was Rs.50,21,104/- and its apportionment has been done by the Tribunal itself, claimant No.1 Swati was granted Rs.20,00,000/-, claimant No.2 Swapnil (Minor) was granted Rs.15,00,000/-, claimant No.3 Tejaswini (Minor) was granted Rs.10,00,000/- and claimant No.4 Antikabai was granted Rs.5,21,104/-.

4. Taking into consideration the apportionment and the fact that still the applicants No.2 and 3 are minors, their shares cannot be allowed to be withdrawn and, therefore, out of the amount that has been granted to applicants/ claimants No.1 and 4, partial withdrawal can be permitted. The Tribunal itself has stated the out of the Rs.20,00,000/- granted to the claimant No.1, 10,00,000/- to be invested in fixed deposit in any Nationalized Bank as per the choice of claimant No.1 and further the interest was directed to be credited to the account of claimant No.1 with quarterly rest. Therefore, she would be getting the said amount by periodical intervals. Under such circumstance, there is no hurdle in allowing her to withdraw the rest of the amount i.e. Rs.10,00,000/-.

5. Further as regards applicant No.4 is concerned, the Tribunal has stated that amount of Rs.3,00,000/- be invested in her name in the fixed deposit of her choice for five years and interest to be credited to her account with quarterly rest. Therefore, she will also get the periodical amount after the investments and, therefore, there is no hurdle in allowing her to withdraw Rs.2,21,104/-. It is to be noted that though the award was for Rs.50,21,104/-, and taking into consideration the aforesaid apportionment, yet in view of the fact that the amount of Rs.63,50,353/- has now been deposited on 03-02-2021. Therefore, taking in to consideration the interest that could have been given and the amount which has been deposited is with that interest, further amount of Rs.5,00,000/- can be allowed to be withdrawn by the applicants No.1 and Rs.2,00,000/- by the applicant No.4. Thus, in all the applicant No.1 is allowed to withdraw amount of Rs.15,00,000/- and applicant No.4 is allowed to withdraw amount of Rs.4,21,104/- subject to giving undertaking within a period of eight weeks that they would make the said amount good, if directed at the time of final disposal of the appeal.

Application stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.