IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 CIVIL APPLICATION NO.7402 OF 2020
IN FA/572/2020

VANDANA MADHAV JAVALE AND ORS

VERSUS

HDFC ERJO GENERAL INSURANCE CO. LTD.,
THR ITS BR MANAGER, MUMBAI AND ORS

Advocate for Applicants : Mr Kiran M. Nagarkar
Advocate for Respondent No.1 : Mr Swapnil Dargad h/f Mr S.G. Chapalgaonkar

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 23rd NOVEMBER, 2021

PER COURT :

1. It is an application for withdrawal of amount moved by the applicants.

2. Heard Mr Kiran Nagarkar, learned counsel for the applicants and Mr Swapnil Dargad, learned counsel holding for Mr S.G. Chapalgaonkar, learned counsel for respondent No.1/Insurance Company.

3. Mr Nagarkar, learned counsel for the applicants submitted that husband of applicant No.1 met with road traffic accident and died due to fatal injuries. Applicant No.1 being widow, is required to look after her minor two sons. She is in need of money. She needs to satisfy day to day livelihood as well as educational expenses of applicant Nos. 2 and 3, who are taking education.

4. Mr Dargad, learned counsel for respondent No.1 strongly opposed to allow this application. He submits that the Insurance Company has raised

twofold defence, one is for contributory negligence and another is of exorbitant amount of compensation awarded by the Tribunal without making statutory deductions. According to Mr Dargad, learned counsel for respondent No.1/Insurance Company, husband of applicant No.1 was riding the motorcycle. He met with an accident due to his own rash and negligent driving and came under the rear wheel of the truck and sustained serious injuries and subsequently died. This aspect needs to be considered. The Insurance Company has taken specific defence before the Tribunal, but the Tribunal has not properly appreciated the evidence of truck driver, who is examined by the Tribunal.

5. Perused the judgment and award passed by the Tribunal. In the light of submissions of learned counsel for both sides. Respondent No.1/Insurance Company has deposited Rs. 83,44,558/- Plus Rs. 25,000/- in this Court in view of the compliance of conditional stay order passed by this Court dated 27th September, 2019.

6. The appeal is of the year 2020. It may take its own time. It is necessary to consider the application moved by the applicants for withdrawal of amount. There is considerable force in the submissions of learned counsel Mr Dargad for respondent No.1/Insurance Company, but applicant No.1 being widow, needs to look after her minor children. It is necessary to look that aspect. Applicant Nos. 2 and 3 are minor sons of applicant No. 1 and they are taking education. Applicant No.1 is the only person, who is looking after the entire family and as such, prayer for withdrawal of amount needs to be considered. By looking to the defence raised by the Insurance Company, I am of the view that applicants can be allowed to withdraw 50 % of the amount of

compensation deposited by the Insurance Company. However, out of that, 50 % amount is required to be invested in the Fixed Deposit in the name of minor children/applicant Nos. 2 and 3 with a liberty to applicant No. 1 to withdraw quarterly interest thereon, which would meet the ends of justice. Hence, the following order :-

ORDER

(I) The application is hereby allowed.

(II) The applicants are permitted to withdraw 50 % of the amount of compensation out of Rs. 83,44,558/- deposited in this Court by the Insurance Company/Respondent No.1 on furnishing usual undertaking. However, 50 % of that amount shall be invested in the name of minor applicant Nos. 2 and 3 with liberty to applicant No. 1, mother to withdraw quarterly interest accrued thereon.

(III) Remaining amount of compensation be invested in the Fixed Deposit Account in any nationalized bank.

(IV) Registry to take steps to that effect.

(V) The Civil Application is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

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