IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.14602 OF 2019
IN
FIRST APPEAL NO.832 OF 2019

Sangita w/o Ashok Bale & ors. ...APPLICANTS

Versus

Royal Sunderal General Insurance
Co. Ltd. & ors. ...RESPONDENTS

Mr M.R. Deshmukh, Advocate for the applicants;
Mr A.A. Puranik, Advocate holding for Mr A.S. Deshpande for respondent no.1;
Mr Y.S. Digraskar, Advocate holding for Mr G.K. Naik-Thigle for respondents no.4 & 5

CORAM : ABHAY AHUJA, J.

DATE : 29-01-2021

P.C.

This is an application filed by the original claimants in M.A.C.P. No.61 of 2015 before the Motor Accident Claims Tribunal, Beed for withdrawal of the compensation amount awarded by the said Tribunal towards accidental death of Shri Ashok Bale in vehicular accident dated 11-11-2014.

2. It is submitted that an amount of Rs.8,42,575/- has been deposited with this Court by the appellant i.e. Royal Sundaram Alliance Insurance Co. Ltd.

3. Mr A.A. Puranik, holding for Mr A.S. Deshpande, learned Counsel for the appellant insurance company, opposes the application for withdrawal, submitting that the accident took place due to the collision between the Ape auto-rickshaw in which the deceased was travelling and the Tractor and, therefore, this was a case of contributory negligence of both drivers. He further reiterates the submission made before the Tribunal that since the temporary registration of the auto-rickshaw had expired when the accident took place and therefore, there was breach of the policy and the insurance company was not liable to pay compensation. He further submits that the Trial Court has not clarified the apportionment of payment in respect of the awarded amount but has only directed that all respondents pay jointly and severally. He, therefore, opposes the application for withdrawal of money, but submits that if in the interim any amount is allowed to be withdrawn, the same should be subject to stringent conditions like bank guarantee, etc.

4. On the other hand, Mr M.R. Deshmukh, learned Counsel appearing on behalf of the applicants submits that the deceased was the son, husband and father of the applicants and he died for no fault of his. He opposes the submissions made by the learned Counsel for the insurance company and submits that as third party his clients are entitled to claim against the insurance company and cannot be made to suffer for the fault on the part of the owner of the auto-rickshaw. He also submits that the impugned order clearly directs as to how the compensation will be paid, when the order states that the respondents no.1 to 5 shall jointly and severally pay the amount of compensation. He, therefore, submits that the entire amount deposited be allowed to be withdrawn upon the usual conditions.

5. Learned Counsel for the applicants further submits that the learned Tribunal has, while calculating the compensation considered the deceased to have notional income of Rs.150/- per day as labourer, come to a figure of Rs.6,99,000/-. He would submit that therefore, the claimants would not be in a position to furnish any bank guarantee as they are from village and having only agriculture as their business.

6. On a due consideration of the matter and after hearing the learned Counsel for the parties, this Court is of the view that until the hearing and final disposal of the appeal, the applicants be permitted to withdraw 70% of the amount deposited with this Court. Hence, we pass the following order :

i) The applicants are permitted to withdraw an amount to the extent of 70% of the amount deposited by the appellant – insurance company as on date, on furnishing written undertaking to the satisfaction of the Registrar (Judicial) of this Court, to the effect that in case the order of the Tribunal is set aside or modified, they shall re-deposit the amount within a period of eight weeks from the date of the order;

ii) The said 70% of the amount deposited by the Insurance Company in this Court as on date be transferred to the four applicants in equal proportion into their respective savings bank accounts upon the details of the respective bank accounts being furnished by the applicants to the Registry of this Court;

iii) After making payment of the said amount, the balance amount be invested by the Registry in fixed deposit with a nationalized bank for a period of six months, with standing instructions to renew the same until further orders of this Court or disposal of the appeal, whichever occurs earlier;

iv) The withdrawal of the amount will be subject to the outcome of the appeal.

v) Civil Application stands disposed of in the above terms.

7. List the First Appeal on 26-02-2021,

(ABHAY AHUJA)
JUDGE

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