

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 CIVIL APPLICATION NO.7241 OF 2020
IN FAST/33773/2019 WITH CA/3616/2020 IN FAST/33773/2019
SUNIL VITHAL BANKAR AND ORS
VERSUS
THE DIV. MANAGER UNITED INDIA INSURANCE CO. LTD. AND ORS

Mr.S.W. Jawale, Advocate for the applicants.
Mr.S.S. Dargad h/f. Mr. S.G. Chapalgaonkar, Advocate for
respondent No.1.
Mr.A.S. Shelke, Advocate for respondent No.2.
Mr.M.M. Ambhore, Advocate for respondent No.6.

CORAM : V.L.ACHLIYA,J.
DATED : 19.01.2021

P.C. :-

01. The applicant/s (original claimant Nos.2,3 and 5) have preferred this application seeking withdrawal of amount.

02. Heard learned counsel for the applicants-claimants and learned counsel representing the appellant - insurance company.

03. In brief, it is contention of the learned counsel for the appellant/insurance company that the appellants have good case to succeed in appeal. The charge-sheet was filed against drivers of both the vehicles based upon investigation conducted in the matter. Both the drivers were found to be rash and

negligent in driving the vehicles. However, the Tribunal has fastened entire liability against the driver, owner of the vehicle insured with the appellant. It is submitted that the liability to pay compensation ought to have been apportioned in equal proportion amongst the owners, drivers and insurer of both the vehicles.

04. On the other hand, learned counsel for the applicants/claimants supported the judgment and order passed by the Tribunal and submitted that the appeal filed is devoid of merit. It is submitted that the deceased was travelling in tempo. The claimants have choice to recover the amount from either of the vehicle. It is further submitted that during pendency of claim petition, original claimant No.1 has expired. Subsequent to decision in the case, claimant No.3 also expired. Applicant Nos.1 to 3 are alone entitled to receive the amount deposited.

05. On due consideration of submissions advanced and challenge raised in the appeal, I am of the view that order in following terms would meet the ends of justice.

O R D E R

- i) The applicant Nos.1 to 3 i.e. original claimant Nos.2,3 and 5 are permitted to withdraw

an amount to the extent of Rs.6,00,000/- (Rupees Six Lakhs). The amount be paid to them in equal proportion by transferring the amount in their respective savings bank account on furnishing particulars of their respective bank account.

ii) After payment of Rs.6 lakhs, balance amount be invested in Fixed Deposit in any nationalized bank initially for a period of two years with standing instructions to renew the same till disposal of appeal.

iii) The withdrawal/payment of amount to the applicants shall be subject to final outcome of the appeal. In-case the award is set aside or modified, the applicants shall re-deposit the amount within eight weeks from the date of passing of such order.

6. The civil application is disposed of in above terms.

[V.L.ACHLIYA, J.]