IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 **CIVIL APPLICATION NO.6829 OF 2020**
IN FA/3677/2019

SINDHU SUDAM GHUGE AND ORS
VERSUS
THE NEW INDIA ASSURANCE COMPANY LTD., AND ANR
...
Mr.S.S. Jadhavar, Advocate for applicants.
Mr.S.R. Bodade, Advocate for respondent no.1.
...

CORAM : V.L.ACHLIYA,J.
DATE : 21.01.2021

ORAL ORDER :

Learned counsel for the applicants undertakes to deposit the deficit Court fees within one week.

2. The applicants-claimants have moved this application seeking withdrawal of amount deposited by the appellant-insurance company for the reasons set out in detail in the application.

3. Mr.Bodade, learned counsel for the appellant-insurance company opposed the application with contention that the impugned judgment and award passed by Tribunal is perverse and not sustainable in law. By referring to the reasons and findings recorded by the Tribunal, learned counsel

submits that although no evidence adduced to prove the income of the deceased, the Tribunal has considered his yearly income as Rs.2,00,000/-. Although the applicants have claimed that the deceased was carrying the business and earning income from agricultural land owned by applicant, however, no evidence adduced to prove the business as well as agricultural income of the deceased. The copies of income tax return not tendered in evidence to show the business income of the deceased. Similarly, the applicants have also not filed 7/12 extract to show that the deceased was owner and in possession of the agricultural land. In absence of such evidence as to proof of income of deceased, the reasons and findings recorded by the Tribunal are not sustainable in law. It is submitted that the award passed by Tribunal is based upon conjunctures and surmises.

4. On the other hand, learned counsel for the applicants-claimants support the judgment and award passed by the Tribunal. It is submitted that the claimants have examined the number of witnesses to prove that the deceased was carrying the business of music and preparing and selling the Cassette of

songs of musicians. The evidence brought through the testimony of Bank Manager it is proved that the deceased was repaying the loan installments of Rs.25,000/- to Rs.27,000/- per month. Beside the business income, the deceased was also deriving the income from the agricultural land. The applicants have tendered in evidence the receipts of payment received on sale of agricultural products.

5. On due consideration of submissions advanced in the light of challenge raised in appeal, I am of the view, there is arguable case to be considered in appeal. It is admitted position that the deceased was not assessed for income tax. No income tax returns produced on record. The Tribunal has assessed the income by presuming that the deceased was earning taxable income by carrying the business however not liable to pay income tax due to various exemptions available under the Income Tax Act. In my view, the reasons recorded in judgment are perverse. The Court is expected to base its findings on the basis of evidence adduced in the case. The deceased was 35 years of age and claims to be doing business. There is no

serious challenge to this evidence. Therefore, in the facts and circumstances of the case, it can be inferred that the deceased must earning income sufficient to maintain his family. Considering the overall facts of the case and the applicant nos.3 and 4 have attained the age of majority during pendency of proceedings, I am of the view, the order in following terms would meet the ends of justice. Hence the following order :-

ORDER

(i) The applicants are permitted to withdraw the amount to the extent of Rs.12,00,000/- out of the amount deposited by the appellant-insurance company on furnishing written undertaking to the effect that in case the award is set aside or modified, they shall redeposit the amount within eight weeks from the date of order.

(ii) The amount Rs.12,00,000/- be paid to the applicant nos.1 to 4 in equal proportion by transferring the amount in their respective Savings Bank Accounts.

(iii) After making the payment of Rs.12,00,000/- to the applicants, the balance amount be invested in fixed deposit with any Nationalized Bank initially for a period of two years with standing instructions to renew the same till further orders from the Court or disposal of appeal whichever earlier.

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

(v) The application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

SGA