**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO.7308 OF 2020
IN FIRST APPEAL [STAMP] NO.22867 OF 2019

LAXMIBAI SUBHAN JADHAV & OTHERS
VERSUS
HDFC GENERAL INSURANCE COMPANY & ANOTHER

…

Mr.Manoj D.Shinde, Advocate for the applicants – claimants.
Mr.M.R.Deshmukh, Advocate for the respondent no.1.

…

CORAM : V.L.ACHLIYA,J.
DATE : 03.02.2021

P.C.

1] The applicants have moved this application seeking withdrawal of the amount deposited by the appellant–Insurance Company.

2] Heard learned counsel for the applicants–claimants and the respondent–appellant–Insurance Company.

3] In brief, it is the contention of the learned counsel for the appellant–Insurance Company that the judgment and order passed by the Tribunal is perverse. It is pointed out that the Tribunal has held that the deceased was traveling as a passenger in a trolley attached to the tractor insured with the appellant–Insurance Company. The trolley was not insured. So also, no premium was paid covering the risk of the labourer employed by the owner for the purpose of loading and unloading of the material in the trolley. It is further pointed out that the Tribunal has observed in the order that 15-16 persons were traveling in the trolley attached to the tractor in contravention of the terms and conditions of the policy. There was no risk covered under the terms of policy of the person traveling in the trolley including deceased. In spite of such evidence and finding, the Tribunal has passed the judgment and award making Insurance Company liable to pay the same and recover the same from the owner / insured. In this background, learned counsel submits that the appellant has good case to succeed in appeal.

4] On the other hand, learned counsel for the applicants – claimants support the judgment and order passed by the Tribunal. He submits that there is no dispute as to the fact that tractor involved in the accident was insured with the appellant–insurance company. It is submitted that the deceased was traveling in the trolley not in the capacity as fare paying passenger but he was traveling as labour for cutting sugar cane. In that view, the Tribunal was justified in passing the order of pay and recover.

5] On due consideration of the submissions advanced, I am of the view that appeal raises arguable case, which needs to be considered on merits. There is observation made by the Tribunal that the deceased was traveling as fare paying passenger along with 15-16 persons. In that view, the interest of the appellant–Insurance Company deserves to be protected while allowing the application to withdraw the amount. Hence the following order :

ORDER

i] The application is partly allowed.

ii] Out of the amount of Rs.6,32,000/- deposited by the appellant–Insurance Company, the amount of Rs.1,50,000/- be paid to the applicant no.1 to be utilized for the maintenance of herself and her minor child, namely, Tulsidas i.e. applicant no.4.

iii] After making payment of Rs.1,50,000/-, the balance amount be invested in Fixed Deposit initially for a period of three years with any Nationalized Bank with standing instructions to renew the same till further orders from this Court.

iv] The interest accrued over the amount invested in Fixed Deposit be paid to the applicant no.1 after regular interval of three months to be utilized for the maintenance of herself and her minor child i.e. applicant no.4. The amount be paid to the applicant no.1 on furnishing undertaking to the effect that in the event award is set aside or modified, she shall re-deposit the amount within eight weeks from the date of passing of the order.

v] The amount be paid to the applicant no.1 by transferring the same in her saving account as per the particulars of the bank to be furnished by the applicant no.1.

vi] Withdrawal of the amount and payment of interest to the applicants shall be subject to the final outcome of the Appeal.

vii] The Civil Application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC