IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 CIVIL APPLICATION NO. 410 OF 2021
IN FIRST APPEAL ST. NO. 40187 OF 2019

BANEMIYA RATANBHAI SHAIKH AND ANR
VS
THE NEW INDIA ASSURANCE CO. LTD. THR ITS BRANCH MANAGER AND ANR

Mr. Umakant U. Wagh, Advocate for the applicants
Mr. S. R. Bodade, Advocate for respondent No. 1

CORAM : V. L. ACHLIYA, J.
DATE : 22-01-2021

P. C.

. The applicants /claimants have moved this application seeking withdrawal of amount deposited by the insurance company in terms of conditional order granting stay passed by this court.

2. Learned counsel for the appellant-insurance company opposed the application seeking withdrawal of amount with contention that there was fundamental breach of policy condition on the part of the insured. It is submitted that at the time of incident insured had not obtained the fitness certificate to ply the vehicle on road. So also, the deceased was also responsible for causing accident. He was driving the motorcycle without wearing the helmate. In this background the learned counsel for the appellant submits that the appellant has good case to succeed in the appeal.

If the applicants are permitted to withdraw the amount, it will be difficult to recover the amount if the award is set aside.

3. On the other hand learned counsel for the applicants/claimants supports the award passed by the tribunal and submits that the appeal filed is devoid of merit. It is the contention of the learned counsel for the applicants that the defense as raised not coverd under the statutory defenses available to the insurance company under the provision of the Motor Vehicle Act. It is further submitted that the appellant has failed to prove that the deceased contributed for cause of accident.

4. On due consideration of the submission advanced in the light of challenge raised in the appeal, I am of the prima-facie opinion that the defense as said not falls within the scope of defense available for the insurance company to avoid the liability to indemnify the insured. So also, if the contention of the appellant is accepted still, the appellant will require to pay the amount and recover it from insured. In that view the applicant cannot be denied from payment of compensation awarded under Section 166 of the Motor Vehicle Act. In that view, I am inclined to pass the following order:

ORDER

i. Out of amount deposited, the applicants are permitted to withdraw the amount to the extent of Rs. 5,00,000/- [Rupees Five Lakhs]. Amount be paid to the applicant Nos. 1 and 2 in equal proportion on their furnishing undertaking to the effect that in the event 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.

ii. After making payment of Rs.5,00,000/- together with interest, the balance amount shall be invested in fixed deposit in any nationalized bank initially for a period of two years with standing instructions to renew the same till further orders from this court.

iii. The interest accrued over the amount invested in the fixed deposit be paid to the applicant No. 1 in regular interval of three months till disposal of the appeal. The amount to be payable by any interest be transferred in the savings account of applicant No.1 after every three months.

iv. Withdrawal of amount and payment of interest to applicants shall be subject to final outcome of appeal.

v. The application is disposed of in above terms.

[V. L. ACHLIYA, J.]

VishalK/ca410.21