IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

929 CIVIL APPLICATION NO.789 OF 2021
IN FAST/11243/2020
BHIKUBAI SOMA KOLI AND ORS
VERSUS
BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD., THR ITS BRANCH MANAGER, AURANGABAD AND ANOTHER

Mr.C.T. Jadhav h/f. Mr. A.D. Pawar, Advocate for the applicants.
Mr.S.S. Dargad h/f. Mr. S.G. Chapalgaonkar, Advocate for respondent No.1.

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

P.C. :-

01. The applicant has moved this application seeking withdrawal of amount deposited by the insurance company.

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

03. In brief, it is contention of learned counsel for the appellant-insurance company that the appellants have good case to succeed in appeal. It is submitted that in the FIR the age of the deceased is mentioned as 70 years. In that view the Tribunal erred in applying multiplier of 7 for assessment of monetory loss. It is further submitted that the vehicle insured with the appellant was falsely involved in the accident. The FIR

was lodged 34 days after the accident. It is submitted that in-case, the applicants are permitted to withdraw the amount the purpose of filing appeal would be frustrated.

04. To counter the submissions advanced, learned Counsel for the applicants-claimants submitted that in the post-mortem report the age of the deceased is shown as 65 years. The Tribunal has acted upon the age shown in the post-mortem report, in absence of documentary evidence showing the age of deceased. In that view, there is no perversity in the judgment. It is further pointed out that the Tribunal has considered the delay in lodging the complaint and the aspect of involvement of the vehicle and discussed the reasons. The appeal filed is devoid of merit.

05. On due consideration of submissions advanced and the challenge raised in the appeal, the application deserves to be allowed. Hence, the following order :-

<u>O R D E R</u>

i) The application is allowed to the extent of applicant No.1.

ii) The applicant No.1 is permitted to withdraw the amount of Rs.2,00,000/- (Rupees Two

Lakhs) out of amount of Rs.3 lakhs deposited by the appellant – insurance company on furnishing undertaking to the effect that in the event the appeal is allowed and the judgment and order passed by the Tribunal is set aside, the applicant shall re-deposit the amount within eight weeks from passing of such order. The amount be paid to applicant No.1 by transferring the amount in her savings bank account as per particulars of bank account to be furnished.

iii) The Registry shall not insist upon personal attendance of applicant No.1 for withdrawal of amount, if the advocate appearing for the applicants produced documents of identification and verification with bank particulars. So also the Registry may explore the possibility of directing the applicant to appear for verification before the Superintendent of Court at Shirpur.

06. The application is disposed of in above terms.

[V.L.ACHLIYA,J.]

snk/2021/JAN21/ca789.21