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

CIVIL APPLICATION NO.313 OF 2020
IN FIRST APPEAL [STAMP] NO. 19983 OF 2018

…

BALKRISHNA DAGDU RASHINKAR & OTHERS
VERSUS
BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD. & OTHERS

…

Mr.D.A.Bide, Advocate for the applicants.
Mr.S.S.Dargad, Advocate holding for Mr.S.G.Chapalgaonkar, Advocate for the respondent no.1.

…

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

P.C.

1] The applicants–claimants have moved this application seeking withdrawal of the amount.

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

3] In brief, it is the contention of the learned counsel for the appellant–Insurance company that the judgment and award passed by the Tribunal is perverse. It is submitted that the owner, driver and Insurance Company has taken a specific stand that vehicle insured with the appellant was not involved in the accident. The complaint was lodged after four days of the accident, involving vehicle insured with the appellant-Insurance Company. It is submitted that the owner and driver were examined in the case. They have categorically deposed that their vehicle was not involved in the accident and on humanitarian consideration the owner has taken the injured to the hospital. The case against them is false. The applicant no.1 – claimant no.1, who is injured witness in the case, categorically deposed that the involvement of the vehicle insured with appellant shown on the basis of the information provided by the police. The application filed by appellant to summon the Investigating Officer rejected by the Tribunal. The Tribunal has held that the vehicle insured with appellant was involved in the accident only on the basis of filing of charge-sheet. It is submitted that it is settled position of law that mere filing of the charge-sheet itself not sufficient to prove the involvement of the vehicle in the accident and proof of rash and negligent driving at the time of accident. It is further submitted that the driver of the vehicle, who was charge sheeted, has been acquitted in criminal case registered against him by holding that the prosecution has failed to prove the act of rash and negligent driving on the part of the driver of the vehicle.

4] Learned counsel submits that there is evidence to show that at the time of accident the deceased was proceeding on the motorcycle alongwith her husband i.e. applicant no.1, who was driving the motor cycle. They were proceeding from Shevgaon towards Newasa. The applicant no.1 was crossing the main road i.e. Pune - Aurangabad road, without taking care of vehicles coming from both the side of Pune-Aurangabad road. The aspect of negligence on the part of driving of motorcycle was not considered by Tribunal.

5] On the other hand, learned counsel for the applicants – claimants support the judgment and award passed by the Tribunal and submits that the evidence on record more than sufficient to prove the involvement of the vehicle insured with the appellant – Insurance company in the accident. The vehicle insured with the appellant was coming from the Ahmednagar gave dash to the motorcycle on which the deceased was traveling along with her husband. In this background, learned counsel submits that appeal preferred is devoid of merits.

6] On due consideration of the submissions advanced in the light of overall facts of the case, the challenge raised in appeal, I am of the view that there is arguable case to be considered in appeal. Out of three claimants, two are minor children of the deceased. The wife of the applicant no.1 died in the accident. The applicant no.1 has filed separate petition seeking compensation on account of injury sustained in said accident. He has withdrawn the amount to the extent of 75% compensation awarded out of amount deposited by the appellant – Insurance Company. The applicant no.1 has already received compensation of Rs.5,89,204/- in claim petition instituted by him.

7] Thus, in view of challenge raised in appeal, I am of the view that the order in following terms would meet the ends of justice:

ORDER

i] The application is partly allowed.

ii] Out of the amount deposited by the appellant - Insurance Company, the amount of Rs.1 lac be paid to the applicant no.1 for addressing immediate need of the minor children i.e. applicant nos.2 and 3.

iii] 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 disposal of the appeal or 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 taking care of the minor children i.e. applicant nos.2 and 3 in the savings bank account of the applicant no.1.

v] The amount in terms of order i.e. Rs.1 lac and payment of interest shall be paid to the applicant no.1 on furnishing undertaking to effect that in the event the award is set aside or modified, the applicants shall re-deposit the same within eight weeks from the date of passing of order by this Court.

vi] The withdrawal of the amount together with interest shall be subject to the final outcome of the appeal.

vii] Civil Application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC