

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

930 CIVIL APPLICATION NO.3534 OF 2021
IN FA/3159/2019
WITH
CA/3902/2021 IN FA/3159/2019

SHALINI SURESH KADAM AND ORS

VERSUS

THE NEW INDIA ASSURANCE CO. LTD., THR ITS AUTHORIZED SIGNATORY,
AURANGABAD AND OTHERS

...

Mr. S.D. Tawshikar, Advocate for applicants

Mr. M.M. Ambhore, Advocate for the respondent No.1

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 23rd JUNE, 2021.

PER COURT :

1 Present applicants are praying for the withdrawal of the entire amount deposited by the respondent No.1-insurance company in its First Appeal, which has been dismissed in default.

2 Heard both sides.

3 It is to be noted that the First Appeal (Stamp) No.29518 of 2019, which later on came to be numbered as 3159 of 2019 appears to have been

dismissed by this Court on 24.01.2020 and it was a conditional order. Thereafter Civil Application No.3902 of 2021 has been filed by the insurance company for condoning the delay in preferring civil application for restoration of First Appeal No.3159 of 2019 and also setting aside the order dated 24.01.2020 passed by this Court. That application would be taken up, however, as regards the present application is concerned, the applicants are the original claimants and learned Tribunal had partly allowed their claim. The amount, that has been deposited by the insurance company, in view of the Award, that has been passed, is to the tune of Rs.45,24,165/- apart from the statutory amount. Taking into consideration the fact that the application has been filed for condoning the delay and for restoration of the First Appeal, only partial withdrawal of the amount can be allowed. So also, the learned Advocate appearing for the insurance company submits that the involvement of the vehicle, which is insured with the appellant itself, is doubtful, but then on inquiry he submits that the insurance company has not led any evidence. Therefore, keeping intact the interest of both the parties partial amount can be allowed to be withdrawn. If we consider the Award, that has been passed, it was for Rs.31,68,780/- with interest and apportionment was made by the learned Tribunal. Amount of Rs.6,00,000/- each was directed to be given to respondent Nos.4 and 5, who appears to be not praying for the withdrawal of their amount and, therefore, that amount which is towards their share will

have to be kept intact. So, that amount comes to Rs.12,00,000/-. By keeping that amount aside which would be available for the disbursement is to the tune of Rs.33,24,165/-. Further, it appears that when the award was passed, original claimant Nos.2 and 3 appears to be the minors at that time and now they have attained the majority. Though the Tribunal had directed investment of certain amount in the name of minor claimants, taking into consideration that they have attained the majority, that order of the Tribunal may not be feasible now. Therefore, from this remaining amount of Rs.33,24,165/-, which is arrived at after securing the payment for original claimant Nos.4 and 5, an amount of Rs.7,00,000/- each is allowed to be withdrawn by the applicant Nos.1, 2 and 3. Rest of the amount be invested.

4 With these directions, Civil Application stands disposed of.

(Smt. Vibha Kankanwadi, J.)

agd