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

22 CIVIL APPLICATION NO.11637 OF 2021
IN FA/613/2020

ASHWINI ANIL NAVSUPE AND ORS
VERSUS
THE BRANCH MANAGER, NEW INDIA ASSURANCE CO. LTD.
AHMEDNAGAR AND ANOTHER

Mr R.K. Temkar, Advocate for applicants
Mr M.R. Deshmukh, Advocate for respondent no.1

CORAM : SHRIKANT D. KULKARNI, J..

DATE : 25th October, 2021

PER COURT :

1. It is an application for withdrawal of amount moved by the applicants/original claimants.

2. Heard Mr R.K. Temkar, learned Counsel for the applicants and Mr M.R. Deshmukh, learned Counsel for respondent no.1/Insurance Company. None present for respondent no.2.

3. Perused the impugned judgment and award dated 16.9.2019 passed in M.A.C.P. No.360/2015 by the Member, M.A.C.T., Ahmednagar.

4. As per the award passed by the Member, M.A.C.T., Ahmednagar, respondent no.1/Insurance Company has deposited Rs.28,82,126/- in this Court. As per the operative part of the award passed by the M.A.C.T., Ahmednagar, Rs.3 lakhs is to be invested in the name of applicant no.1, Rs.4 lakhs each to be invested in the name of applicants no.2 to 4. Thus, Rs.15 lakhs is to be invested in the names of applicants no.1 to 4, as stated hereinabove. An amount of Rs.13,82,126/- is available for payment as revealed during course of argument.

5. Mr Deshmukh, learned Counsel for respondent no.1/Insurance Company highlighted the point that income of the deceased is not proved according to the Motor Vehicles Act and secondly, it is a case of contributory negligence since the accident had occurred on the center of the road. There are two vehicles involved in the accident, one is van/ambulence and another is truck. Deceased was ambulence driver. These points are certainly important and would be taken care of at the time of final hearing of the appeal.

6. Now, the question is about payment of compensation. Applicant no.1 is stated to be widow and applicants no.2 to 4 stated to be minor children of applicant no.1 and applicants no.5 and 6 are the in-laws of applicant no.1. Obviously, applicant no.1 needs to take care of her children and in-laws after demise of her husband, who was looking after them. Applicants no.2 to 4 are taking education, applicants no.5 and 6 are senior citizens and they are not earning members of the family.

7. Having regard to the above scenario and considering the fact that now, applicant no.1 alone is required to take care of applicants no.2 to 6, she needs money. The application for withdrawal of amount needs to be allowed. So far as question of payment is concerned, according to learned Counsel for the applicants, at least 50% amount may be paid. On the other hand, Mr Deshmukh, learned Counsel for the Insurance Company submits that at the most 40% amount may be paid out of the remaining amount.

8. By taking into consideration all the facts in its entirety and looking to the status of applicant no.1 who is required to take care of applicants no.2 to 6, it would be just and appropriate to allow the applicants to withdraw 50% of

the amount, which is in balance i.e. Rs.13,82,126/-. Thus, the applicant would be entitled to get 50% out of the amount of Rs.13,82,126, on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court. In the result, I proceed to pass the following order :

ORDER

(i) Civil Application is partly allowed as under :

(ii) The applicants are entitled to withdraw 50% of the amount of compensation i.e. Rs.13,82,126/-, on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court.

(iii) The Registrar (Judicial) to calculate the figure of that 50% and make payment to the applicants by account payee cheques, as per the shares determined by the Tribunal in the operative part of the order.

(iv) Civil Application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

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