

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

**9 CIVIL APPLICATION NO.3153 OF 2020
IN FA/3850/2019**

**USHA RATNAKAR NAGARGOJE AND ORS
VERSUS
SHRIRAM GENERAL INSURANCE CO. LTD., THR ITS DIV.
MANAGER AND ORS**

Mr. Kedar Balbhim R., Advocate for the applicants
Mr. S. G. Chapalgaonkar, Advocate for respondent No.1

CORAM : V. L. ACHLIYA, J.

DATE : 11-01-2021

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. The applicants have moved this application seeking withdrawal of amount deposited by the appellant insurance company.

2. Heard learned counsel for the applicants/claimants and the learned counsel representing the respondents.

3. Mr. Chapalgaonkar, learned counsel for the appellant submits that the appellant has good case to succeed in the appeal. It is submitted that that the accident occurred on 30-07-2012. On the date of accident, there was no valid insurance policy in force. The insurance policy obtained by the finance company on behalf of insured was cancelled before the commencement of insurance

policy in view of repayment of loan by the owner/insured. It is submitted that the policy in question was cancelled w.e.f. 18-11-2011. The insurance company has taken a specific stand that there was no valid insurance covering the date of accident in force on the date of accident. In support of plea taken by the appellant insurance company, the appellant insurance company has examined witness and also produced the entire record proving the cancellation of policy including the refund of payment received from the financier by insurance company. It is submitted that in case, the applicants are permitted to withdraw the amount it will be difficult to recover the amount. In the background of facts of the case and the challenge raised in the appeal, the learned counsel submits that the application seeking withdrawal of amount be decided alongwith appeal.

4. Mr. Kedar, learned counsel for the applicants/claimants submits that the appeal is devoid of merit. By referring to judgment and order passed by the tribunal, the learned counsel submits that the tribunal has dealt the issue in minute detail and categorically recorded the findings that the insurance company has failed to prove that there was no valid insurance on the date of accident and policy was cancelled. It is further submitted the documents produced in that behalf by the appellant found to be doubtful. It is submitted that the applicants be allowed to withdraw the amount on furnishing appropriate undertaking.

5. On due consideration of the submissions advanced and the challenges raised in the appeal, I am of the view that the order in following terms would meet ends of justice. Hence, the following order:

ORDER

- i. The application is allowed.
- ii. The applicants are permitted to withdraw the amount to the extent of Rs.10,00,000/- [Rupees Ten Lakhs] out of amount of Rs.83,50,609/- deposited by the insurance company. Out of Rs. 10,00,000/- [Rupees Ten Lakhs], the amount of Rs. 5,00,000/- [Rupees Five Lakhs] be paid to the applicant No. 1-Usha Ratnakar Nagargoje and the balance amount of Rs. 5,00,000/- be paid to applicant Nos. 5-Baburao Madhavrao Nagargoje and 6-Pramila Baburao Nagargoje in equal proportion on each of them 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.
- iii. After making the payment of Rs. 10,00,000/- [Rupees Ten Lakhs] to the applicant Nos. 1, 5 and 6, the balance amount together with interest accrued if

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any, over the amount deposited, be invested in fixed deposit in any nationalized bank initially for a period of two years with standing instructions to renew fixed deposit till further orders from this court.

iv. The interest accrued over the amount invested in fixed deposit be paid to the applicant No.1 after every three months till further orders from this court on furnishing undertaking to that in the event the award is set aside or modified the applicants shall re-deposit the amount received towards interest within eight weeks from the date of passing of order by this court and amount received shall be utilized for maintenance of herself and maintenance of applicant Nos. 2 to 6.

v. Undertaking to be filed to remain in operation till disposal of appeal.

vi. Civil application is disposed of.

[V. L. ACHLIYA, J.]