Chitra Sonawane

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3274 OF 2020

IN

FIRST APPEAL [STAMP] NO.30690 OF 2017

Smt.Jagubai B. More & Ors.]… Applicants.

In the matter between:

The New India Assurance Co. Ltd.].. Appellant.

Vs.

Smt.Jagubai B. More & Ors.]… Respondents.

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Mr.Vaibhav R. Gaikwad for applicants in I.A. no.3274/2020.

Mr.Sandeep S. Jinsiwale for respondents in IA no.3274/2020 and for appellant in FA (St.)30690/2017.

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 11TH MARCH, 2021

P.C.

1. This is an application for withdrawal of the amount of compensation by the applicants who are dependents and legal heirs of the deceased who, met with an accident and ultimately succumbed to the injuries sustained.

2. According to Mr.Vaibhav Gaikwad, the learned Counsel for the applicants, applicant Nos. 1 and 4 are widows while applicant nos.2, 3 and 5 are sons of the deceased. The deceased was the only

earning member of the family. Due to his sudden death, the only source of income has stopped and therefore, in order to maintain the family as well as to incur expenses of education of applicant nos.2, 3 and 5, the learned Counsel has prayed for withdrawal of the entire amount of compensation with accrued interest.

3. On the other hand, Mr.Sandeep Jinsiwale, the learned Counsel for the Insurance Company/appellant objects withdrawal of amount by drawing my attention to paragraph no.14 of the impugned judgment and award wherein, it has been observed by the learned Member, M.A.C.T., Satara, as under;

> Had it been a fact that the motorcycle which the deceased was driving went on wrong side and collided on the jeep then in that case it could have been said that the motorcycle driver contributed the accident. But taking note of the fact that accident occurred in the middle of the road it can not be said that deceased contributed to the accident. I, therefore, answered point No.1 in the affirmative.

4. However, without going into the merits at this stage, the applicants are permitted to withdraw 50% of amount of compensation with accrued interest, in the light of the fact that, they do not have any independent source of income. However, withdrawal is permitted with a condition that applicants nos. 1 and 4 give Undertakings within two weeks.

5. If the applicants fail to give Undertakings, the tribunal shall

invest the amount in a Fixed Deposit, in any Nationalized Bank for a period of one year.

6. However, if 50% of the amount is withdrawn, the balance shall be invested in a Fixed Deposit in any Nationalized Bank for a period of one year.

7. Application is disposed of.

[PRITHVIRAJ K. CHAVAN, J.]