

S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1134 OF 2021
IN
FIRST APPEAL NO. 382 OF 2020

1. Bharti Pravin Ronad (Ronald)
2. Prajakta Pravin Ronad (Ronald) .. Applicants
IN THE MATTER BETWEEN
Divisional Officer, New India Assu. Co. Ltd. .. Appellant
Versus
Bharti Pravin Ronad (Ronald) & Ors. .. Respondents

.....
Mr. Pritesh Kantikumar Bohade for the Applicants
Mr. Sandeep Sharad Jinsiwale for Respondents
.....

CORAM : MILIND N. JADHAV, J.

DATE : MAY 07 2021.
(Through Video Conferencing)

P.C.:

1. Heard.
2. This interim application has been filed by the applicants i.e. wife and daughter of the deceased in First Appeal (St.) No. 12067 of 2015 seeking withdrawal of some amount from the awarded amount deposited by the respondent No.1 Insurance Company in the trial court.
3. The Respondent No.1 - Insurance Company has filed the First Appeal assailing the judgement and award dated 11.09.2014 passed by the M.A.C.T., Nashik in M.A.C.P No. 813 of 2007.

4. At the outset, Mr.Pritesh Bohade, learned counsel appearing for the applicants submitted that award dated 11.09.2014 has passed by the M.A.C.T. for the sum of Rs.8,49,000.00 alongwith interest @7% per annum. He submitted that in the year 2015 on a similar application this Court by order dated 29.04.2015 passed in Civil Application No. 1644 of 2015 permitted the applicant No.1 i.e. the wife of the deceased to withdraw Rs.3 lakhs alongwith accrued interest. He submitted that in the said order liberty was also granted to the applicants to file appropriate application for withdrawal of the remaining amount to be decided on it own merits. Hence the present application has been filed. He submitted that the present covid situation has hit the applicants very badly in as much as it become extremely difficult for the applicants to arrange for their basic necessities for their survival; the applicants have no sufficient source of income because of the lockdown as there is no working member in their family. He has, therefore, requested the Court to consider the application on humanitarian grounds and prayed to the Court to permit the applicants to withdraw a reasonable amount from the remaining awarded amount which stands deposited by the Insurance Company in the trial court.

5. PER CONTRA, Mr. Sandeep Jinsiwale, learned counsel appearing for respondent No.1 - Insurance Company submitted on

instructions that the prayer by the applicants, *prima-facie*, appeared to be genuine, especially in view of the present covid-19 pandemic situation and the effect of lockdown in Nashik. He submitted that this Court may pass an appropriate order in the facts and circumstances of the present case.

6. On perusal of the pleadings and the impugned order in the First Appeal viz. the judgement and award dated 11.09.2014, it is seen that the deceased was serving as an accountant in a private company and was getting a salary of Rs.6,000.00 per month. The deceased met with a fatal accident on 08.09.2007 when he was 42 years old leaving behind the applicant Nos. 1 and 2. The applicant No.2 being the daughter was 13 years old at the time of the accident. Perusal of the judgement dated 11.09.2014 and more specifically the operative part of the same directs the Insurance Company to pay the awarded amount to the applicants; there is a direction that a sum of Rs. 3 lakhs each be deposited in the fixed deposit in the name of both the applicants separately in any nationalised bank for a period of 5 years; that the applicant No.1 would be entitled to receive quarterly interest on the above fixed deposit receipts in the name of both the applicants so as to meet and tide over the situation and have a reasonable amount in their hands to lead their lives and also cater to their well being. However, because of the First Appeal filed by the insurance

company the judgement and award has been stayed by the Court by its order dated 29.04.2015. However, in clause (d) of para No.5 of the order of this Court, this Court has granted liberty to the applicants to approach this Court for withdrawal of the remaining amount. The said para (d) reads thus :

"5.....
a.....
b.....
c.....
d. Liberty granted to the Respondent - claimant to file an appropriate Application for withdrawal of the remaining amount, if she so desire, which will be decided on its own merits.
e.....
f.....
g....."

7. After considering the submissions advanced on behalf of the applicants, the pleadings as stated in para No.5 of the application, I am of the opinion that the applicants are entitled to withdraw some amount out of the remaining amount deposited in the trial court without any security and subject to the outcome of the First Appeal. Both the applicants are jointly entitled to withdraw a sum of Rs.2,50,000.00 out of the remaining amount alongwith any interest amount on the same and any further interest that would be accrued on the amount pursuant to the date of deposit and till the date of withdrawal. This total amount shall be computed and concluded by the parties for the purpose of withdrawal before approaching the trial court. If required, any fixed deposit made of the remaining amount shall be foreclosed and encashed prematurely for the purpose of

release of the abovementioned amount to the applicants. Since there is a direction in clause (f) of the order dated 29.04.2015 that the applicant No.1 is entitled to withdraw the interest on the fixed deposit amount at quarterly rests, without furnishing any security and if the applicant No.1 has already withdrawn and received this interest amount on the fixed deposit amount at quarterly rests, then in that case the applicants shall only be entitled to withdrawal of Rs.2,50,000.00 out of the remaining amount without furnishing any security and subject to the outcome of the First Appeal.

8. In view of the above directions, Interim Application stands disposed of with no order as to costs.

[MILIND N. JADHAV, J.]