IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.405 OF 2021
IN
FIRST APPEAL NO.447 OF 2012
WITH
FIRST APPEAL NO.447 OF 2012

Indubai Vikram Dherange & Ors. ...Applicants
Versus
The New India Assurance Co. Ltd. ...Respondent

….

Mr. Dilip Bodke for the Applicants.
Mr. S.M. Dange for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 21st JUNE, 2021.

P.C.:-

The Applicants, who are original claimants have filed this application for withdrawal of balance amount of compensation deposited by the Appellant-Insurance Company as per the judgment dated 11/10/2011 in Claim Petition No.519 of 2009.

2. Applicants/original claimants being the widow and children of deceased-Vikram Dherange had filed a petition under Section 166 of the Motor Vehicle Act, 1888 alleging that said Vikram Dherange expired as a result of Motor Vehicular Accident on 08/03/2009. Said vehicle was

insured with the Appellant-Insurance Company. After considering the evidence on record the Tribunal has awarded total compensation of Rs.15,74,968/- with interest @ 9% p.a. from the date of the petition till realisation. The Appellant-Insurance Company has deposited the entire amount, in view of which the execution of the impugned judgment and award has been stayed by this Court. By order dated 19/07/2013 this Court had allowed the Applicants/original claimants to withdraw the total compensation of Rs.9,00,000/-.

3. The Applicants have filed this application claiming that the Applicant No.1 is about 65 years of age and suffering from several ailments and she requires money for medical treatment and other household expenditures.

4. Learned counsel for the Appellant-Insurance Company objects for withdrawal on the ground that substantial amount has been withdrawn. He submits that the accident was caused solely due to negligence of the deceased. He claims that the Tribunal has erred in attributing negligence to the driver of the vehicle and also not applying multiplier of 9 when the deceased has only two months' service left.

5. I have perused the records and considered the submissions

advanced by the learned counsel for the respective parties.

6. The records prima facie indicate that the driver of the offending vehicle was charge sheeted for having driven the vehicle in a rash and negligent manner. The Appellant-Insurance Company has not examined the driver. Hence, prima facie there does not appear to be any error in the findings recorded by the Tribunal. The multiplier applicable is also in accordance with the dictum in ***Sarla Verma and Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121*** *and* ***National Insurance Co. Ltd. v/s. Pranay Sethi, 2017 16 SCC 680***. Considering the fact that Applicant No.1/Original Claimant No.1, who is the widow of the deceased is a senior citizen of advanced age and is suffering from several medical ailments, further amount of Rs.4,00,000/- is allowed to be withdrawn with proportionate interest accrued thereon subject to an undertaking that the Applicant No.1 shall refund the said amount with interest in the event the Appellant succeeds in the appeal.

7. The application stands disposed of.

8. Considering the narrow controversy involved in the appeal, parties are put to notice that an endeavour will be made to dispose of

the appeal and cross objection finally on the next date of hearing.

9. Learned counsel for the Appellant-Insurance Company states that statutory amount of Rs.25,000/- was invested in FD only for a period of one year. In the event, the FD is not renewed, same shall be renewed from time to time till the disposal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)