IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Application No. 1982 / 2017
in
First Appeal No. 310 / 2017

Smt. Pournima Manoj Utekar and Anr. .. Applicants

Vs.

United India Insurance Co. Ltd. .. Respondent

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Mr. C.J. Doveson, Advocate for the Applicant and for Respondent No.1 and 2 in First Appeal.
Ms. Varsha Chavan, Advocate for Respondent (Original Appellant).

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CORAM : SANDEEP K. SHINDE J.
DATE : 5th MAY, 2021.
(Through Video Conference)

P.C. : -

Heard.

1. Applicants – Original Respondent No. 1 and 2 in subject First

Appeal are seeking leave to withdraw the amount of compensation, deposited by the United India Insurance Co. Ltd. in satisfaction of award 946/2010 drawn by Chairman, MACT Mumbai.

2. Applicant No. 1 is widow and Applicant No. 2 is mother of deceased Manoj Utekar.

3. The Tribunal vide award dated 23rd March, 2016, awarded compensation Rs. 17,53,000/- with interest at the rate of 9% per annum from the date of application till realization.

4. Aggrieved by the subject award, United Company Ltd. has preferred the appeal.

5. Applicant seeks permission to withdraw part of the compensation amount.

6. Application is opposed by learned Counsel for United India

Insurance Company, on the ground that the insurance cover note produced by the claimants was found fabricated. She has drawn my attention to Paragraph No. 16 of the impugned judgment. Another ground urged by the Counsel for Insurance Company is that the Applicant No. 1 did not enter in the witness box and had not proved definite income of the deceased Manoj Utekar. It is therefore contended that the learned Member ought to have awarded the compensation on the 'Notional Income'.

7. I have perused the Paragraph No. 16 of the impugned judgment. The learned Member has observed thus;

"Evidence of insurance company is therefore required to be believed that the cover note on the basis of which claimants are claiming that vehicle was insured with insurer is possibly a false cover note. Insurance Company however after noticing this cover note, did not take any steps to challenge its authenticity and obstructs its use."

8. Thus, in consideration of the observations, the contention of the learned Counsel for Insurance Company cannot brushed aside. However, in this case, the husband of Applicant No.1, died in

vehicular accident in February, 2010. It is informed that at the relevant time, he was 26 year old. Applicant No.2 is mother and father of deceased Manoj Utekar was one of the claimants. Thus parents of the deceased are now senior citizen and have not independent source of income. Till date, Claimants have not received compensation, since 2010. The appeal is not likely to be heard in near future.

9. In consideration of the facts of the case, in my view, to secure ends of justice, Original Claimant No. 1 is permitted to withdraw Rs. 2 Lacs; Original Claimant No. 2 Manohar Utekar is permitted to withdraw Rs. 1 Lac and Original Claimant No. 3 Smt. Sunita Manohar Utekar is permitted to withdraw Rs. 1 Lac.

10. In view of the facts of the case and for the reasons stated, the application partly allowed and hence the following order;

ORDER

i. The Applicants are permitted to withdraw the compensation amount with aforesaid.

ii. The Applicants shall file separate or composite formal application before the MACT, Mumbai alongwith an Undertaking that they shall bring back the compensation, in case the impugned award is set aside with interest as may be directed by this Court, while disposing of the subject First Appeal.

iii. The learned Member, MACT shall process the application and release the compensation as stated above to the Applicants, preferably on or before 31st May, 2021.

iv. The learned Member shall act on authenticated copy of this order.

11. In consideration of the facts of the case, the appeal be listed for final hearing in a week commencing from 12th July, 2021.

12. Application is partly allowed and disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J.)