

Sneha
N.
Chavan

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 427 OF 2019
IN
FIRST APPEAL (ST) NO. 24333 OF 2017

Anita Dyaneshwar Thombare & Ors. .. Applicants

In the matter between:

New India Assurance Co. Ltd. .. Appellant
V/s.

Anita Dyaneshwar Thombare & Ors. .. Respondents

Ms. Varsha Chavan for the Applicants.

Ms. Poonam Mital, for the Appellant.

CORAM : C.V. BHADANG, J.

DATE : 6th JANUARY, 2021

PC.

1. This is an application for withdrawal of amount of compensation.

2. Dyaneshwar Thombare, died in a vehicular accident, which occurred on 10.12.2008. The applicants are the widow, a daughter and a son of the deceased. The applicants along with Keshav Thombare, the father of the deceased (since deceased) filed

application No. 269 of 2009 before the Motor Accident Claims Tribunal, Mumbai claiming compensation of Rs.5,00,000/- in respect of the death of Dyaneshwar Thombare. The Tribunal by an award dated 01.10.2016 has found that the deceased was responsible for contributory negligence to the extent of 50% and awarded compensation of Rs.5,66,500/- along with interest at the rate of 7.5% per annum, from the date of application till realisation. The original appellant/insurance company has deposited an amount of Rs.9,15,302/- with the Motor Accident Claims Tribunal, Mumbai.

3. The learned counsel for the applicants submits that after the award was passed, the father of the deceased has expired and the daughter Ms. Vishakha Thombare has attained majority. It is submitted that the son is on the verge of attaining majority. It is submitted that the applicants have not received any amount except an amount of Rs.50,000/- towards no fault liability.

4. The learned counsel for the insurer has submitted that one of the defence raised is about, dishonour of the cheque towards the premium, as a result of which, there was no insurance coverage of the vehicle as on the date of the accident. The said defence has been negatived by the Tribunal.

5. Be that as it may. The applicants have not received any amount except Rs.50,000/- in respect of the death of Dyaneshwar Thombare who was the sole bread earner, who died in the accident way back in the year 2008.

6. Considering the over all circumstances, I find that some partial withdrawal can be allowed, subject to conditions. Hence, the following order.

ORDER

(i) Applicant No.1 Anita Dnyaneshwar Thombare and Applicant No.2 Vishakha Dnyaneshwar Thombare, are permitted to withdraw a total amount of Rs.5,00,000/- (Rs. Five lakhs only) from out of the compensation deposited before the Tribunal on furnishing usual undertaking to bring back the amount alongwith interest, if, so ordered by this Court.

(ii) The amount shall be utilised for the purpose of welfare of the minor also.

(iii) The remaining amount shall continue to stay invested in a fixed deposit, with any nationalised bank.

(iv) Civil Application is disposed of accordingly.

C.V. BHADANG, J.