Uday S. Jagtap

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3793 OF 2019
IN
FIRST APPEAL NO. 1383 OF 2015

Toufik Hanif Momin & Anr. .. Applicants

In the matter between
The New India Insurance Co. Ltd. .. Appellant

Vs.
Toufik Hanif Momin & Anr. .. Respondents

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Mr. Shailesh D. Chavan for the applicants
Mr. D.R. Mahadik for the appellant – insurer

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 12th FEBRUARY, 2021

P.C.

1. A praecipe is moved by the applicants – claimants seeking withdrawal of the amount of Rs.15,35,981/- deposited by the insurer in M.A.C.T., Satara.

2. The applicants are aged about 45 and 27 years. The withdrawal is sought for the expenses of the education of their two children namely Simran and Samira, who are prosecuting their studies in Saraswati English School, Koregaon. It is also the contention of the learned Counsel for the applicants – claimants that applicant no.1 is retired and now working as a security guard with State Bank of India. The applicant no.2 is a housewife and does not have any source of income. The applicants are under

depression due to loss of their 7 year old son. The applicant no.2 has some health issues. For all these reasons, the applicants have prayed for withdrawal of the amount as stated above.

3. The learned Counsel for the appellant - insurer however, objects the withdrawal of the entire amount of compensation with accrued interest by contending that he has a good case on merits, in view of the fact that the learned Chairman, M.A.C.T. has awarded the compensation which is on much higher side than what has been laid down by the Hon'ble Supreme Court in the case of ***Sarla Verma and Ors. Vs. Delhi Transport Corporation and Anr. 2009 ACJ 1298*** and ***National Insurance Co. Ltd. Vs. Pranay Sethi & Ors. 2017 ACJ, 2700***. He drew my attention especially to the fact that though the deceased was 7 years old, his notional income was taken at Rs.5,000/- by adding 50% towards future prospects. Besides, the learned Chairman, M.A.C.T. had awarded Rs.1,00,000/- each for loss of love and affection.

4. Having considered the respective submissions, presently, the applicants are permitted to withdraw 35% of the amount of compensation deposited by the insurer in M.A.C.T. with accrued interest.

5. The applicants – claimants shall furnish undertaking within two weeks that if the appellant succeeds in the appeal, the applicants – claimants shall return the amount with interest at such rate as would be directed by this Court, depending upon the outcome of the first appeal.

6. If the applicants do not file an undertaking within the aforesaid period, the amount deposited by the appellant - insurer shall be invested by the M.A.C.T in the fixed deposit in any Nationalized Bank for a period of one year and thereafter for one more year again after obtaining order from this Court.

7. If 35% amount is withdrawn by the applicants, balance amount shall be invested by the M.A.C.T in a fixed deposit as stated above, in a Nationalized Bank.

8. The application stands disposed of.

(PRITHVIRAJ K. CHAVAN, J.)