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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 4132 OF 2019
(For withdrawal of amount)

IN
FIRST APPEAL (STAMP) NO. 30594 OF 2019

1. Smt. Riya Gajanan Chorghe
& 2 Ors. ... Applicants

In the matter between :

1. The New Indian Ass. Company Ltd.
& Anr. ... Appellants

Vs.

1. Smt. Riya Gajanan Chorghe
& 2 Ors. ... Respondents

.....

Mr. Jeeni Antony for applicants.
Mr. Devendra S. Joshi for appellants.

.....

CORAM : N.J. JAMADAR, J.
DATE : 4th October, 2021

PER COURT :

1. Heard the learned counsel for the applicants and the learned counsel for the appellants-respondents.

2. This application is preferred to allow the applicant No.1 to withdraw the amount of compensation deposited by the appellant in terms of the judgment and order dated 25th June 2018 passed by the Commissioner for Employees' Compensation and Judge, Labour Court, Thane.

3. The applicants have averred that the applicant No.1 is the

widow of the deceased and applicant Nos.2 and 3 are the minor son and daughter, respectively, of the deceased. Since the deceased was the sole bread-winner, the applicants are in dire need of compensation to support the necessities of life.

4. The learned counsel for the appellant-insurer resisted the prayer for withdrawal of the amount. It was submitted that the accident has not at all occurred during the course of the employment and, thus, the insurer could not have been saddled with the liability to pay compensation.

5. The core issue as to whether the accident occurred during the course of the employment can be legitimately adjudicated while deciding the appeal finally. Indisputably, the applicants, who are the widow and minor children of the deceased, find themselves in an adverse situation. Their claim that they require the amount to sustain themselves cannot be said to be unsustainable. I am, therefore, persuaded to allow the applicants to withdraw a portion of the amount of compensation deposited by the appellant. In the totality of the circumstances, the applicants can be permitted to withdraw 50% of the amount of compensation deposited by the appellant along with the interest accrued thereon, subject to furnishing an undertaking before the Commissioner for Employees'

Compensation and Judge, Labour Court, Thane, that the applicants would bring back the amount in the event it is held that they are not entitled to the compensation.

6. The application, thus, stands partly allowed.

Shraddha Talekar, PS

(N.J. JAMADAR, J.)