Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1767 OF 2019

IN

FIRST APPEAL [STAMP] NO.13437 OF 2018

Sumati Ashok Kharwa and others.	**]**	**Applicants**
Vs.		
Bajaj Allianz General Insurance Co. Ltd.	**]**	
and another.	**]**	**Respondents**

IN THE MATTER BETWEEN:

Bajaj Allianz General Insurance Co. Ltd.	**]**	
and another.	**]**	**Appellants**
Vs.		
Sumati Ashok Kharwa and others.	**]**	**Respondents**

.....

Ms. Varsha Chavan, for Applicant.

Ms. Yogita Deshmukh-Chitnis, for Respondent-Appellant.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 15th FEBRUARY, 2021.

P.C.

1. The applicants-claimants have moved this application seeking withdrawal of the amount of compensation deposited by the respondent-insurer in M.A.C.T, Mumbai.

2. Learned Counsel for the applicants has drawn my attention to the observations made by the learned Member in the impugned judgment that on the date of the accident, nothing has been brought on record by the insurer to show that on the date of the accident, major sons of the deceased were maintaining themselves after the death of their father. It was the observation in the context of the income of the major sons at the time of the accidental death of their father. Today, after 12 years,the major sons of the deceased must have been earning their livelihood independently.

3. Learned Counsel for the respondent-insure objects withdrawal of the entire amount of compensation.

4. Having considered the respective submissions, at this stage, the applicants are permitted to withdraw 50% of the amount of compensation with accrued interest deposited by the insurer in M.A.C.T, Mumbai.

5. The applicants are at liberty to withdraw 50% of the amount deposited by the respondent-insurer before the concerned M.A.C.T upon furnishing an undertaking that if the respondent-insurer succeeds in the appeal, the applicants will return the amount with interest at such rate as would be directed by this Court depending upon the outcome of the first appeal. Undertaking shall be filed within two weeks.

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

7. If 50% amount is withdrawn by the applicants, balance amount shall be invested by the M.A.C.T in a fixed deposit as stated above, in a Nationalized Bank.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. Respective shares of the applicants be proportioned as per the order passed by the Tribunal.

9. The application stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]