

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

First Appeal Stamp No. 23072 of 2019

H.D.F.C. Ergo General Insurance Co. Ltd. **Vs.** Dharmapal Kawaduji Chunrkar (Dead) & Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri H.N. Verma, Advocate for the Appellant.
Shri Y.B. Mandpe, Advocate for Respondent Nos.2 and 3.

CORAM : S.M. MODAK, J.
DATE : 4th JANUARY, 2021.

Civil Application (CAF) No.4232/2019

Heard both the sides.

The Claims Tribunal, Chandrapur as per the judgment dated 20th December, 2018 directed the appellant/original non-applicants therein to pay compensation of Rs.44,33,369/- along with the interest at the rate of 9% per annum. The appellant/Insurance Company could not prefer an appeal in time for the reasons stated in the application. There is an opposition for condonation of delay. I find that the reasons are sufficient. Certain office procedure needs to be complied with. Hence, the order:-

The delay of 219 days in preferring an appeal is condoned.

The civil application is disposed of.

Civil Application (CAO) No.460/2020

The original claimants/respondent Nos.1 to 3 are asking for withdrawal of 50% of the decretal amount. It comes to

Rs.28,65,409/-. The Insurance Company has deposited 50% of the decretal amount as directed by this Court on 26th November, 2019.

There is an opposition for withdrawal of even 50% of the amount. There is a request to take up this matter for final hearing. Yet the paper-book is to be filed. So, the withdrawal application needs to be decided.

There is a challenge to the findings of the Claims Tribunal, for the reason that the claimants cannot be said to be dependents on the income of the deceased. The deceased was the son of original claimant Nos.1 and 2 and the brother of original claimant No.3. There is a contention that the income of the deceased is not proved. There is also a contention that if 50% amount is allowed to be withdrawn, there will be difficulty in recovering the amount, if the appeal is allowed.

It is submitted on behalf of the claimants that they have discharged their burden by adducing necessary evidence and they are in need of money.

The Claims Tribunal has granted Rs.15,000/- towards loss of estate and funeral expenses. Rs. 15,523.05/- was considered as multiplicand and an amount of Rs.31,66,692/- was quantified towards loss of dependency. There is addition towards future prospects.

Considering the grounds taken in the appeal, I feel that the claimants cannot be permitted to withdraw 50% of the amount.

The father of the deceased has expired during pendency of the petition. Now, the mother and the daughter are the only claimants. The Claims Tribunal has directed for equal distribution of the amount amongst the claimants. So, the share of each claimant will be approximately Rs.22,00,000/- as lump sum amount. Out of that, 50% amount has been deposited.

Deceased being the son and brother of the claimants, they need to be granted certain relief as they have lost the son and the brother. Even, compensation cannot give them the love of their beloved one. So, keeping aside all contentious issues, certain relief needs to be granted at this stage. I think, at this stage, the claimants are entitled to withdraw only Rs.10,00,000/-. I am not inclined to accept the request for withdrawal of Rs.28,65,409/-. Hence the direction:-

1. The civil application is **partly allowed**.
2. Respondent Nos.2 and 3 are permitted to withdraw Rs.10,00,000/- (Rupees Ten Lakhs Only) along with interest.
3. Nazir is directed to transfer the amount equally in the bank accounts of respondent Nos.2 and 3 along with the accrued interest.
4. Respondent Nos.2 and 3 are directed to give an undertaking that they will return the amount, if the appeal will go against them.
5. Remaining amount be reinvested.

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Heard.

Admit.

Call for record and proceedings.

Issue notice to the respondents.

Learned Advocate Shri Y.B. Mandpe waives notice for respondent Nos.2 and 3.

Fresh notice be issued to respondent No.4.

JUDGE