

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

CIVIL APPLICATION (CAF) NO. 1409/2021 IN FIRST APPEAL NO. 1267/2018

Universal Sompo General Insurance Co. Ltd., **Versus** Smt. Pratibha wd/o Ramesh Pote and others

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

Court's or Judge's Orders

Shri F.I. Khan, Advocate for appellant.

Shri P.R. Agrawal, Advocate for Respondent Nos. 1 to 4.

CORAM : S.M. MODAK, J.

DATE : 12/08/2021

1] The notice on respondent Nos. 5 and 7 could not be served due to change of residence. The appellant knows the address before the Tribunal as their last known address. Hence, notice be served on them by paper publication by respondent Nos. 5 and 7.

2] Application is disposed of.

Civil Application (CAF) No. 1104/2021

1] Heard learned Advocate for the appellant and learned Advocate for respondent Nos. 1 to 4/original claimants.

2] Already this Court has permitted these respondents to withdraw 25% of the deposited amount as per the order dated 30/07/2019. The main reason for withdrawal contended at that time was old age of respondent No.4, who is mother of the deceased. Now, the respondents says that they are in need of

money for incurring the education expenses of respondent Nos. 2 and 3. The prayer is opposed on behalf of the Insurance Company. They prayed that matter can be heard finally after notice is served on respondent Nos. 5 and 7 by Paper Publication.

3] The deceased was a teacher, the tribunal while quantifying the compensation has not applied the multiplier and instead of that has considered remaining service of the deceased. So according to respondents if the multiplier is applied the amount of compensation will be more. As against this learned advocate for the appellant submitted that they have also taken the ground of contributory negligence and other grounds.

4] As per the order dated 15/10/2018, this Court directed the Insurance Company to deposit entire amount of compensation. However, while staying the execution of the impugned judgment, Court directed the appellant to deposit the principal amount. In view of that the amount of Rs. 59,49,846/- is deposited. Learned Advocate for the appellant admits that the amount of interest is not deposited and accordingly to respondent it may come to more than Rupees 20 Lakhs.

5] I find the reasons mentioned in the application as genuine. Even though the respondents might have received the benefits from the employer of the deceased, i.e. a different issue and the respondents are certainly entitled to ask for withdrawal of the amount. So, I am inclined to allow the prayer. Even if the appellant may succeed in the appeal, still they are not deposited

the interest amount. So application deserved to be allowed.
Hence, the order :

ORDER

- A] Nazar is directed to transfer the remaining amount from Rs. 59,49,846/- [after considering the earlier withdrawal of 25%] along with the accrued interest in the bank account of respondent No.1.
- B] The respondent No. 1 is directed to give an usual undertaking and respondent No.1 to utilize that amount for educational expenses of respondent Nos. 2 and 3 as they are minor.

First Appeal No. 1267/2018

- 1] Appellant to file private paper-book within two months.
- 2] List the matter on 05/10/2021.

JUDGE