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

Civil Application [CAF] No.675 of 2019
in
First Appeal St. No.23975 of 2018

The Oriental Insurance Co. Ltd.
vs.
Najmunsaher wd/o Mohd. Shafique & others

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

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Mrs. Anita Mategaonkar, Advocate for the Applicant/Appellant.
Shri S.R. Charpe, Advocate for Respondent Nos.1 to 3.

CORAM : S.M. MODAK, J.
DATE : 5th JANUARY, 2021.

Heard both the sides.

02] There is a delay of 90 days in preferring an appeal. The prayer is opposed on behalf of respondent Nos.1 to 3. Respondent Nos.5 & 6 are not served. The issue can be decided in their absence also. The reasons mentioned in the application are convincing. Hence, the delay is condoned. The appeal be registered.

03] The application is allowed and disposed of accordingly.

First Appeal St. No.23975/2018 :

Heard.

02] The judgment of the Claims Tribunal, Amravati is challenged by the Insurance Company mainly on the ground that the income calculation done is not supported by the documentary evidence and the medical bills were not proved by examining the necessary witnesses. The original claimant-respondent No.1 has got different version about the same.

03] **Admit** the appeal.

04] Call for record and proceedings.

05] Learned Advocate Shri S.R. Charpe waives notice on behalf of respondent Nos.1 to 3.

06] Issue fresh notice to respondent Nos.5 & 6.

Civil Application [CAF] No.676 of 2019 :

Heard

02] The Insurance Company has deposited the entire decretal amount with interest thereon, as directed by this Court.

03] In view of that, the stay granted by this Court be continued till final disposal of the appeal.

04] The application is allowed and disposed of accordingly.

Civil Application [CAO] No.706 of 2020 :

Heard both the sides.

02] There is a strong opposition for withdrawal of the entire amount. It is for the reason that if the decision of the appeal will be in favour of the appellant-Insurance Company, there will be difficulty in recovering the amount. There is a stress on the approach of the Claims Tribunal about the calculations of the income of the deceased. The Claims Tribunal has considered monthly income of the deceased at Rs.6,000/-, as he was running a pan-shop. There is also an emphasis that granting of Rs.1,59,414/- on account of medical expenses, is unwarranted because those bills were not proved during enquiry. Whereas, according to the claimants, the Claims Tribunal has granted only minimum compensation, which was permissible in the facts and circumstances and there is no need to examine independent witnesses to prove the medical bills.

03] The Claims Tribunal has directed to deposit Rs.1,00,000/- each in the name of minor petitioner Nos.2 & 3 i.e. present respondent Nos.2 & 3. The remaining amount has to be distributed amongst respondent Nos.1 & 4 in the proportion of 75% and 25% respectively.

04] Now, it is submitted that respondent No.4, who was the mother of deceased, is no more. So, the appellant needs to take steps after necessary information is supplied on behalf of the contesting respondents. So, 25% amount allowed to her share cannot be considered now, which roughly comes to Rs.5,00,000/-. So also, Rs.1,00,000/- each has to be kept in the fixed deposit till respondent Nos.2 & 3 attain majority, as directed by the Claims Tribunal.

05] While deciding the appeal finally, the contesting respondents may address the Court about disbursing of the amount to the minors. So, this Court can decide about withdrawal of the amount only by excluding Rs.7,00,000/- each, which roughly comes to Rs.13,00,000/-.

06] So, considering all the circumstances, this Court feels that at this stage, claim of respondent No.1 can be accepted only for an amount of Rs.10,00,000/-. She can use it for herself as well as for minors. Hence, the following order is passed :

i. The application is partly allowed.

ii. Respondent No.1 is permitted to withdraw an amount of Rs.10,00,000/- along with interest accrued thereon on furnishing usual undertaking.

iii. The Nazar is directed to transfer that amount in the bank account of respondent No.1 on personal identification.

iv. The Nazar is further directed to deposit an amount of Rs.1,00,000/- each in the name of minor - respondent Nos.2 & 3 till the period they attain majority.

v. The appellant is directed to take steps about deceased-respondent No.4, once the death certificate is supplied to them.

vi. The application is disposed of accordingly.

JUDGE

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