IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

934 CIVIL APPLICATION NO.3773 OF 2022
IN FA/1565/2021

PANDURANG S/O SAKRU JADHAV AND ANR

VERSUS

HDFC ERGO GENERAL INSURANCE CO. LTD.,
THR ITS AUTHORIZED SIGNATORY/MANAGER,
AURANGABAD AND ORS
…

Advocate for Applicants : Mr Sujit Patil
Advocate for Respondent No. 1 : Mr S.G. Chapalagaonkar
Advocate for Respondent Nos. 4 to 6 : Mr S.K. Chavan

WITH
CIVIL APPLICATION NO.3774 OF 2022
IN FA/1565/2021

BHAGYASHRI WD./O INDRAJIT JADHAV AND ORS.

VERSUS

HDFC ERGO GENERAL INSURANCE CO. LTD.,
THR ITS AUTHORIZED SIGNATORY/MANAGER,
AURANGABAD AND ORS
…

Advocate for Applicants : Mr S.K. Chavan
Advocate for Respondent No. 1 : Mr S.G. Chapalagaonkar
Advocate for Respondent Nos. 4 and 5 : Mr S.A. Patil

CORAM : SHRIKANT D. KULKARNI, J.
DATE : 16th March, 2022

PER COURT :

1. Civil Application No. 3773/2022 is moved by the parents of the deceased for withdrawal of amount and Civil Application No. 3774/2022 is moved by the widow and children of the deceased equally for withdrawal of amount.

2. Heard Mr Sujit Patil and Mr Sudhir Chavan, learned counsel for the respective applicants/claimants and Mr S.G. Chapalgaonkar, learned counsel for respondent No.1/insurance company.

3. Perused the impugned Judgment and award passed in MACP No. 189/2019 by the Member, M.A.C.T. at Jalna.

4. On perusing the impugned Judgment and award, it is noticed that the Tribunal was pleased to award the compensation quantified at Rs. 92,05,990/- @ 9% per annum from the date of claim petition till realization of amount fastening the liability jointly and severally on the insurer of the vehicle/truck involved in the accident.

5. Respondent No.1/insurance company has deposited entire amount of compensation with accrued interest thereon in this Court which stated to be Rs. 1,08,54,645/- in addition to statutory deposit of Rs. 25,000/- while filing the appeal.

6. Mr Chapalgaonkar, learned counsel for respondent No.1/insurance company vehemently submitted that the deceased was driving a car. He gave dash to the rear side of the truck. His car toppled down and deceased sustained injuries and succumbed to death. The accident was caused due to sheer rash and negligent driving of the deceased. After 15 days of the accident, brother of the deceased filed F.I.R. on the basis of hearsay information against truck driver. He submitted that the truck as well as car involved in the accident were examined by the R.T.O. and it was found that the car had given dash to the rear side of the truck. Meaning thereby, the deceased had dashed to the rear side of the truck. He therefore, submitted that though it was a case of clear negligence of the deceased, the Tribunal has not considered this aspect. He submitted that

even the Tribunal has not considered aspect of contributory negligence. The insurance company has preferred this appeal by taking all these defences. It is necessary to protect interest of respondent No.1 /insurance company involved in the appeal while considering the application for withdrawal of amount.

7. On the other hand, learned counsel for the respective applicants/claimants submitted that 40% amount of compensation (20% + 20%) is invested in the name of minors. As such, the claimants may not get that amount until the minors attend the age of majority. 60% amount of compensation is only available for payment. They submitted that the family has lost earning member of the family, and therefore, the applicants may be permitted to withdraw entire amount of compensation which is now available.

8. I have considered the submissions of learned counsel for the respective sides and also I have gone through the impugned Judgment and award passed by the Tribunal in M.A.C.P. No. 189/2019. The Tribunal while recording the findings, seems to have held the truck driver alone for the rash and negligent driving and held responsible for the death of Indrajit Pandurang Jadhav and accordingly fastened liability to pay the compensation on the owner and insurer of the truck.

9. Mr Chapalgaonkar, learned counsel for respondent No.1/insurance company has raised various issues going to the root of factum of negligence and fastening liability on the insurance company.

10. It would not be just and proper to touch merits of the appeal as on today. That exercise would be done at the time of final hearing of the appeal. At the same time, the defences raised by the appellant/insurance company are required to be considered while considering these applications for withdrawal of

amount. It is revealed that 40% (20% + 20%) amount of compensation has been invested in the name of minor children of the deceased and only 60% amount of compensation is available for disbursement. It is true that widow of the deceased is required to shoulder the responsibility to look after and maintain her children, who are taking education. Certainly, she is more in need of money as compared to the parents of the deceased. By considering this aspect coupled with the defences raised by the insurance company, I am of the considered view that if the widow of the deceased is allowed to withdraw Rs. 20,00,000/- and the parents of the deceased are permitted to withdraw Rs. 10,00,000/-, that would meet their present need and educational expenses of minor children. That may also take care of interest of the insurance company involved in the appeal.

11. Having regard to the above reasons and discussion, I proceed to pass the following order :-

(A) Civil Application No. 3773/2022 filed by the parents of the deceased is hereby allowed as under :-

(i) The applicants/claimants are permitted to withdraw Rs. 10,00,000/- of the compensation amount (Rs. 5,00,000/- + Rs.5,00,000/-) on furnishing usual undertaking with the Registrar (Judicial) of this Court.

(iii) The Registry is directed to make payment to the respective applicants/claimants as stated above after furnishing undertaking.

(ii) The civil application is accordingly disposed of.

(B) Civil Application No. 3774/2022 filed by the applicant No.1/widow of the deceased is hereby allowed as under :-

(i) The applicants/claimants are permitted to withdraw Rs. 20,00,000/- of the compensation amount on furnishing usual undertaking with the Registrar (Judicial) of this Court.

(ii) The Registry is directed to make payment to the respective applicants/claimants as stated above after furnishing undertaking.

(iii) Remaining balance amount shall be invested in Fixed Deposit Account in any nationalized bank for a period of two years with renewal clause.

(iv) The civil application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

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