IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

906 CIVIL APPLICATION NO.2786 OF 2022
IN FA/1817/2020
WITH CA/3588/2022 IN FA/1319/2021

BABASAHEB NIVRUTIRAO CHATE AND ANOTHER
VERSUS
RAMRAO NAVNATH RATHOD AND OTHERS

...

Advocate for Applicants : Mr. D. J. Choudhary.
Advocate for Respondent No.2 : Mr. S. S. Patil.
Adv. for Respondent No.4: Mr. S. S. Dargad, h/f Mr. S. G. Chapalgaonkar.

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CORAM : **SHRIKANT D. KULKARNI, J.**
DATE : 05th May, 2022.

P.C.:

. These are the applications for withdrawal of compensation amount moved by the applicants/claimants.

2 Heard Mr. Choudhary, learned counsel for applicants/claimants, Mr. S. S. Patil, learned counsel for respondent/Reliance General Insurance Company and Mr. Dargad, holding for Mr. Chapalgaonkar, learned counsel for respondent/New India Assurance Company Limited.

3 It is revealed during course of argument that deceased was driving the motorcycle at the time of accident. He alleged to have given dash to the backside of the trolley attached with the tractor

resulted into an accident. The deceased succumbed to the injuries. The Tribunal after considering the pleadings and evidence on record was pleased to determine the compensation at Rs.34,53,952/- and directed to pay the same at the rate of 8% per annum from the date of petition to the claimants. The liability is fastened on both the insurance companies i.e. Reliance General Insurance Company and New India Assurance Company Limited equally. Accordingly, both the insurance companies have deposited their half share amount of compensation with the Registry while obtaining stay order.

4 Reliance General Insurance Company has challenged the impugned judgment and award passed by the Tribunal mainly on the ground of defence of contributory negligence, which is not considered by the Tribunal and secondly, quantum of compensation. Whereas, New India Assurance Company Limited has challenged the impugned judgment and award on the ground that involvement of the vehicle is very much doubtful since registration of trolley number is not mentioned in the FIR. It is revealed during course of argument that the New India Assurance Company Limited has not examined any witness in support of its defence. It is a death claim.

5 Having regard to the nature of death claim and after considering the submissions of the learned counsel for both the sides, I am

convinced to allow the claimants to withdraw 50% of the amount of compensation in deposit, which would meet the ends of justice and protect the interest of both the sides.

6 Mr. Choudhary, learned counsel for claimants urged to transfer the amount of compensation to be paid to the claimants to the Tribunal so that the claimants would be in a position to withdraw the same. Accordingly, the amount which is to be withdrawn by the claimants is required to be transferred to the concerned Tribunal for disbursement thereof.

7 Hence, the following order is passed:

O R D E R

I. Both the applications are hereby allowed as under:

II. The Registry is directed to transfer 50% of the amount of compensation with accrued interest thereon deposited by Reliance General Insurance Company in this Court as well as 50% of the amount of compensation with accrued interest thereon deposited by New India Assurance Company Limited in this Court, to the concerned Tribunal.

III. The applicants/claimants are hereby permitted to withdraw 50% of the amount of compensation with accrued interest thereon deposited by Reliance General Insurance Company as well as allowed to withdraw 50% of the amount of compensation deposited by New India Assurance Company Limited, on furnishing usual undertaking to the satisfaction of MACT, Majalgaon.

IV. Remaining 50% of the compensation amount with accrued interest thereon shall be invested in fixed deposit account in any Nationalized Bank initially for a period of one year with renewal clause.

V. Both the applications are accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

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