**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO.3253 OF 2022 IN FA/2573/2021

SIMA KIRAN MAKODE AND OTHERS
VERSUS
THE MANAGER, NEW INDIA ASSURANCE CO. LTD., THROUGH ITS DIVISIONAL MANAGER, AURANGABAD AND OTHERS

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Mr. R.A. Tambe, Advocate for the Applicants
Mr. S.G. Chapalgaonkar, Advocate for Respondent No.1

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CORAM : SHRIKANT D. KULKARNI, J.

DATE : 22nd MARCH, 2022

PER COURT:-

1. It is an application for withdrawal of amount moved by the applicants / original claimants.

2. Heard Mr. Tambe, learned counsel for the applicants / claimants and Mr. Chapalgaonkar, learned counsel for respondent no.1 / insurance company.

3. Mr. Chapalgaonkar, learned counsel for the insurance company submitted that the appellant / insurance company has preferred this appeal mainly on two grounds, first, vehicle/ truck truck has been planted after eight days of the accident though the accident in question had taken place in front of Sangamner Taluka

Police Station. It is a case of false implication of the vehicle in order to get the compensation amount. The second ground for the appeal is rash and negligent driving of the deceased who was driving his own car at the time of the accident.

4. Mr. Chapalgaonkar submitted that according to the Motor Vehicles Act and Rules, the driver is supposed to keep safe distance from the vehicle, which is ahead so that the accident can be avoided in case of sudden application of brakes by the vehicle, which is ahead. He pointed out that in the present case, the truck driver alleged to have applied the brakes, which was in motion. The deceased has given dash to the rear side of the truck, which clearly indicates that the deceased was himself responsible for the accident. The deceased drove his vehicle car in a rash and negligent manner and dashed to the rear side of the truck and, therefore, no negligence can be attributed to the truck driver in order to fasten the liability on the insurance company. He, therefore, strongly opposed to allow this application for withdrawal of the compensation amount.

5. Mr. Tambe, learned counsel for the applicants / claimants invited my attention to the findings recorded by the Tribunal while

deciding M.A.C.P. no. 109 of 2015. He pointed out that the Tribunal has considered the defences raised by the insurance company. The Tribunal has turned down those defences. It is held by the Tribunal that the truck driver was rash and negligent and caused the accident, which resulted into death of the deceased who was driving the car. The deceased was earning salary of Rs. 50,000/-. He was the sole earning member of the family. The applicants / claimants are in need of money. He, therefore, urged to allow 100% withdrawal of the compensation amount.

6. Having considered the submissions of both the sides, I have gone through the impugned judgment and award passed by the Member, M.A.C.T., Sangamner. The Tribunal was pleased to award the compensation of Rs.82,58,000/- with interest at the rate of 6% per annum and the proportionate costs. That impugned judgment and award passed by the Tribunal is challenged by the insurance company before this Court and it is under the scrutiny. It is evident from the record that the appellant / insurance company has deposited an amount of Rs.1,13,17,600/- in this Court in addition to statutory deposit of Rs.25,000/- while preferring the appeal.

7. At this stage, it may not be appropriate to touch the merits of the appeal. That exercise would be made at the time of the final hearing of the appeal. However, the defences raised by the appellant / insurance company cannot be overlooked while deciding this application for withdrawal of compensation amount. The F.I.R. seems to have been lodged after eight days delay. The claimants may not be at fault. The fact remains that there was considerable delay in filing of F.I.R. and that too when accident in question had taken place in front of Sangamner Taluka Police Station. As such, the argument advanced by Mr. Chapalgaonkar to that effect cannot be overlooked. At this stage, the interest of the insurance company needs to be protected while considering this application for withdrawal of compensation amount vis-a-vis the applicants / claimants.

8. Having considered the above said aspects and looking to the defences raised by the appellant / insurance company, I am of the view that applicant nos. 1 and 2 can be allowed together to withdraw an amount Rs. 20,00,000/- and applicant nos. 3 and 4 can be allowed to withdraw Rs.5,00,000/- together, which would meet the ends of justice and it may also protect the interest of the appellant / insurance company. Liberty can be granted to the

applicants / claimants to move application for withdrawal of amount as and when need arises and circumstances demand.

<u>O R D E R</u>

(i) The application is hereby allowed as under:

(a) Applicant / claimant nos. 1 and 2 are hereby permitted to withdraw Rs.20,00,000/- together with accrued interest thereon on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court.

(b) Applicant nos. 3 and 4 are hereby permitted to withdraw Rs.5,00,000/- together with accrued interest thereon on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court.

(c) Liberty is granted to the applicants / claimants to move fresh application for withdrawal of amount depending upon the situation and need arises in future.

(d) Remaining balance of the amount of compensation with accrued interest thereon shall be invested in the fixed deposit with any nationalized Bank initially for a period of one year with the clause of renewal.

(ii) The civil application is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane