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

912 CIVIL APPLICATION NO. 6645 OF 2020
IN FA/2072/2020

SMT. VIJAYA SAHEBRAO PATIL AND OTHERS
VERSUS
BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.,
THROUGH ITS BRANCH MANAGER, AURANGABAD

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Advocate for Applicants : Mr. Shrikant S. Patil.
Advocate for Respondent : Mr. S. S. Dargad, h/f Mr. S. G. Chapalgaonkar.

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CORAM : **SHRIKANT D. KULKARNI, J.**

DATE : 13th January, 2022.

P.C.:

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

2 Heard Mr. Shrikant Patil, learned counsel for the applicants/claimants and Mr. Dargad, holding for Mr. Chapalgaonkar, learned counsel for respondent/insurance company. Perused the impugned judgment and award passed by the Motor Accident Claims Tribunal, Dhule in M.A.C.P. No.303 of 2013.

3 It is revealed during the course of argument that the Tribunal was pleased to allow the death claim moved by the applicants and directed to the respondent Nos.1 to 3 to pay compensation of Rs.40,12,393/- (including of NFL amount) with interest at the rate of

6% per annum from the date of institution of the claim till realization of the amount. The respondent/insurance company has deposited the entire decretal amount under the impugned judgment and award with interest in this Court. The respondent/insurance company has preferred the appeal. The appeal has been admitted. Now, the question is about withdrawal of amount.

4 According to the learned counsel for applicants, it was a death claim. The date of accident is 16th February, 2013 and FIR came to be registered on 22nd February, 2013, by police constable Anil Patil against the rider of motorcycle bearing registration No.MH-19-AU-3531. He submitted that on 18th February, 2013, the police officer had been to the spot and prepared *Panchanama* of the scene of offence and found two motorcycles lying at the accident spot. He submitted that though in the statement of rider of motorcycle on which deceased was on pillion seat, not stated about involvement of the motorcycle and its registration number. He was hospitalized and subsequently, he has stated the same. He further pointed out that there was one witness to the accident by name Manoj Patil, whose statement has been recorded by the police. He further pointed out that the insurance company has also examined the investigation officer during the trial of the claim. It is not a case of false involvement of the vehicle. The Tribunal has considered all these aspects and allowed the claim

petition partly. The applicants have not received any amount from the date of decision of the claim and they are entitled to withdraw atleast 75% of the amount deposited by the insurance company.

5 Mr. Dargad, holding for Mr. Chapalgaonkar, learned counsel for respondent/insurance company strongly opposed to allow this application on the ground that it is a case of false involvement of the vehicle. According to him, even though accident had occurred on 16th February, 2013, the FIR came to be lodged after six days i.e. on 22nd February, 2013. The motorcycle rider has not stated the vehicle number, which had given dash to his vehicle while recording statement on 17th February, 2013. It shows that subsequently another motorcycle has been implicated in order to claim the compensation. Mr. Dargad, learned counsel submitted that in view of false involvement of the vehicle and looking to the defence raised by the insurance company, it is not a fit case to allow the applicants to withdraw the amount.

6 It is an admitted position that the accident took place on 16th February, 2013 and FIR came to be registered on 22nd February, 2013. At the same time, it cannot be overlooked that the police officer had been to the accident spot on 18th February, 2013 and prepared *Panchanama* of the spot of accident where he found two motorcycles at the accident spot, out of which, one motorcycle belongs to the

person against whom FIR came to be registered by the police. It is further evident from the record that the insurance company has examined the investigation officer of the case. There was an eye witness to the accident, whose statement has been recorded by the police officer. The Tribunal seems to have considered the defence raised by the insurance company regarding false involvement of the vehicle and turned down the same. Under these circumstances, I am of the view that the applicants are entitled to withdraw the amount to the extent of 50% of the amount in deposit with the Registry, however, subject to furnishing 25% usual undertaking with the Registrar (Judicial) of this Court and 25% on furnishing solvent surety/security. It may protect the interest of the insurance company.

7 Having regard to the above reasons and discussion, I am convinced to allow this application permitting the applicants to withdraw 50% of the amount in deposit with the Registry. Hence, the following order is passed:

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

I. The application for withdrawal of amount is hereby allowed as under:

> The applicants are permitted to withdraw 50% of the amount in deposit with the Registry on condition that the applicants

shall furnish usual undertaking with the Registrar (Judicial) of this Court for 25% amount and for remaining 25% amount on furnishing solvent surety/security to the satisfaction of the Registrar (Judicial) of this Court.

II. On furnishing such solvent surety/security and undertakings by the respective applicants, the Registry to make payment accordingly.

III. The remaining 50% balance amount be invested in the fixed deposit account in any Nationalized bank initially for a period of two years as of today with clause of renewal.

IV. The civil application is disposed of accordingly.

[SHRIKANT D. KULKARNI, J.]

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