IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.4526 OF 2019 IN FA/3241/2018

HARSHA SHASHIKANT SARODE
VERSUS
NEW INDIA INSURANCE CO. LTD., THROUGH BRANCH MANAGER, AURANGABAD AND ANOTHER

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Ms. Aarti A. Bhagwat, Advocate h/f Mr. G.K. Kshirsagar, Advocate for the Applicant
Mr. S.S. Dargad, Advocate h/f Mr. S.G. Chapalgaonkar, Advocate for Respondent No.1

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CORAM : SHRIKANT D. KULKARNI, J.
DATE : 27th APRIL, 2022

PER COURT:-

1. It is an application for withdrawal of compensation amount moved by the applicant / claimant.

2. Heard Ms. Aarti Bhagwat holding for Mr. G.K. Kshirsagar, learned counsel for the applicant / claimant and Mr. S.S. Dargad holding for Mr. Chaplagaonkar, learned counsel for respondent No.1 / insurance company. Perused the impugned judgment and award dated 04.08.2018 passed in M.A.C.P. No. 57 of 2017 by the Member, M.A.C.T. at Aurangabad.

3. Ms. Aarti Bhagwat holding for Mr. Kshirsagar, learned counsel for the applicant / claimant submits that the applicant happens to be the widow of deceased. The deceased was serving as an engineer. The Tribunal was pleased to award the compensation of Rs.48,08,014/- by considering the defence raised on behalf of the insurance company. She submits that the applicant / claimant may be allowed to withdraw the entire amount of compensation deposited by the insurance company.

4. Mr. S.S. Dargad holding for Mr. Chapalgaonkar, learned counsel for respondent No.1 / insurance company strongly opposed to allow this application. He submitted that the insurance company has preferred the appeal mainly on two grounds; (i) false involvement of the vehicle and (ii) defence raised by the insurance company was not properly considered by the Tribunal while deciding the claim. He submitted that in the present case, the date of accident is 12.08.2013, the son of the deceased lodged the F.I.R. on the very day against the unknown vehicle. On 19.08.2013, the statement of certain witness came to be recorded and on their statements, the driver of the Van Mr. Namdeo came to be revealed and accordingly he was prosecuted by way of charge-sheet. He submitted that it is a case of false involvement of the vehicle.

Moreover, the Van driver was not holding the effective driving licence on the date of accident. As such, the application for withdrawal of compensation amount may be rejected in order to protect the rights and interest of the appellant / insurance company involved in the subject matter.

5. I have considered the submissions of learned counsel for both the sides. The appellant / insurance company has raised specific defence of false involvement of the vehicle. It seems that the Tribunal has not allowed the insurance company to examine the concerned witnesses in support of its defence. By considering all these points involved in the matter as well as looking to the other grounds, it is necessary to consider the stand taken by the insurance company. At the same time, it cannot be overlooked that the applicant / claimant has lost her life partner in a motor accident. She is need of money.

6. Having regard to the above factual scenario and looking to the submissions of learned counsel for both the sides, I am convinced to allow the applicant / claimant to withdraw the lumpsum amount of Rs.15,00,000/-, it would meet the ends of justice.

<u>ORDER</u>

(i) The application is hereby allowed as under.

(a) The applicant / claimant is hereby permitted to withdraw Rs.15,00,000/- out of the amount of compensation deposited by the insurance company with the Registry on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court.

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

(ii) The civil application is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane