

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

935 CIVIL APPLICATION NO.4978 OF 2022
IN FA/2710/2021

MANISHA W/O HEMANT AVHAD AND OTHERS
VERSUS
THE ORIENTAL INSURANCE CO. LTD., BEED AND OTHERS

...
Advocate for Applicants : Mr. Amol S. Gandhi.
Advocate for Respondent No.1 : Mr. Manoj Shinde, h/f Mr. M. K. Goyanka.
...

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

DATE : 01st April, 2022.

P.C.:

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

2 Heard Mr. Amol Gandhi learned counsel for the applicants and Mr. Manoj Shinde, holding for Mr. M. K. Goyanka, learned counsel for respondent No.1/insurance company.

3 Mr. Manoj Shinde, holding for Mr. Goyanka, learned counsel for the insurance company strongly opposed to allow this application. He invited my attention that though there was an eye witness to the accident who had picked up the deceased in injured condition, not informed his father. The FIR came to be registered after four days of the accident. He doubts the involvement of the vehicle. He submitted that the Tribunal has applied multiplier of 16, which is incorrect in view

of the landmark judgment in the case of ***Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another***, reported in, ***(2009) 6 Supreme Court Cases 121***. He further pointed out that the Tribunal has also committed an error while making deduction from the income of the deceased at 1/4th. According to Mr. Shinde, it ought to have been 1/3rd deduction. He submitted that because of that and because of incorrect application of multiplier, it has resulted in awarding exorbitant compensation of Rs.1,00,000/- per year. He submitted that the insurance company has preferred appeal and there are good grounds in the appeal.

4 Mr. Gandhi, learned counsel for the claimants submitted that the driver of the vehicle Scorpio jeep was examined before the Tribunal, who has admitted about the accident and involvement of the vehicle. No witness was examined on behalf of the insurance company to support its defence. The deceased was working as a primary teacher. The applicants were dependent on the deceased. He further submitted that the insurance company has not deposited the entire amount of compensation and there is shortfall of Rs.17,00,000/- and seeks directions. He, therefore, urged to allow the claimants to withdraw atleast 75% of the amount of compensation.

5 Mr. Manoj Shinde, holding for Mr. Goyanka, learned counsel for

the insurance company submitted that he has already informed to the concerned officer of the insurance company regarding calculation of interest part and if there is shortfall, he would comply the same.

6 On perusing the impugned judgment and award passed in MACP No.129 of 2018, it is revealed that the Tribunal has awarded compensation at Rs.86,65,216/- to the original claimants. That sum of compensation is to be paid with interest at the rate of 9% per annum from the date of claim till realization of amount in full within three months from the date of judgment and order. The impugned judgment is challenged before this Court on the ground of non involvement of vehicle coupled with other grounds and it is under scrutiny. At this stage, it would not be proper to touch the merits of the appeal. I am on the point to consider the prayer of applicants regarding withdrawal of compensation. Whatever defences raised on behalf of the insurance company would be taken care of. The husband of applicant No.1 and father of applicant Nos.2 and 3, has lost his life in the motor vehicle accident. Applicant Nos.2 and 3 are minors and taking education. Applicant No.1 is a widow and she is required to shoulder the responsibility to look after her minor sons and daughter and old aged parents-in-law.

7 Having considered the submissions of both the sides and

looking to the facts of the case, it would be appropriate to allow the applicants to withdraw the compensation amount to the extent of 50% with accrued interest thereon, which would protect the interest of the insurance company. With this, I proceed to pass following order :

ORDER

- I. The application is hereby allowed.
- II. The applicants/claimants are hereby permitted to withdraw 50% of the amount of compensation with accrued interest thereon on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court.
- III. The Registry is directed to make payment to the applicants as per the apportionment made in the impugned judgment and award passed by the Tribunal in MACP No.129 of 2018.
- IV. Remaining balance 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. The application is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]