

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

930 CIVIL APPLICATION NO.4979 OF 2022
IN FA/1311/2018

SINDHUBAI SHRIRAM ROTE AND ORS

VERSUS

R. MURUGAN S/O M. RAJU AND ORS

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Advocate for Applicants : Mr G. S. Rane
Advocate for Respondent No. 3 : Mr S.S. Dargad h/f Mr S.G. Chapalgaonkar

CORAM : SHRIKANT D. KULKARNI, J.
DATE : 5th APRIL, 2022

PER COURT :

1. It is a second application for withdrawal of compensation amount moved on behalf of the applicants/original claimants.
2. Heard Mr G.S. Rane, learned counsel for the applicants/original claimants, Mr S.S. Dargad holding for Mr S.G. Chapalgaonkar, learned counsel for respondent No.3/insurance company.
3. Perused the earlier order passed by this Court dated 26th September, 2018.
4. It is revealed during the course of argument that this Court was pleased to allow the claimants to withdraw 50% of the amount in deposit with accrued interest thereon vide order dated 26th September, 2018. Accordingly, the claimants have withdrawn 50% of the amount of compensation with accrued interest thereon. Now, the applicants/claimants are seeking to withdraw remaining 50% balance of the compensation amount.

5. Mr Rane, learned counsel for the applicants/claimants submitted that the appeal came to be dismissed for want of steps vide order dated 21st June, 2019. Now, the insurance company is seeking to restore the appeal. The claimants are entitled to withdraw remaining amount of compensation.

6. On the other hand, Mr S.S. Dargad holding for Mr S.G. Chapalgaonkar, learned counsel for respondent No.3/insurance company strongly opposed to allow this application. He submitted that the insurance company has preferred the appeal mainly on two grounds (1) case of contributory negligence and (2) miscalculation of loss of income. He submitted that the deceased was doing job of LIC Agent. Even though deceased is no more, his wife is getting commission in respect of the work done by her husband. As such, there is no loss of income.

7. Having regard to the submissions of both the sides and looking to the earlier withdrawal of 50% of the amount of compensation with interest and looking to the facts of the case, I am convinced to allow lumpsum amount of Rs. 10,00,000/- to the applicants/claimants in view of the fact that the appeal has been dismissed for want of steps and insurance company is in the process to restore the appeal. With this, I proceed to pass the following order :-

ORDER

- (i) The application is hereby allowed.
- (ii) The applicants/original claimants are permitted to withdraw amount of Rs. 10,00,000/- (Rupees Ten Lakhs Only) on furnishing usual undertaking with the Registrar (Judicial) of this Court.

- (iii) The Registry is directed to make payment to the applicants/claimants in the same proportion as determined by the Tribunal as well as in view of the order passed earlier by this Court dated 26th September, 2018.
- (iv) The civil application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

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