IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 13053 OF 2022
IN
FIRST APPEAL NO. 365 OF 2022

SHASHIKALA VENKATI BUKTARE AND OTHERS
VERSUS
CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD AND ANOTHER

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Advocate for the Applicant : Mr. G.K. Muneshwar
Advocate for respondent No.1 : Mr. S. G. Chapalgaonkar

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CORAM : S. G. DIGE, J.
DATE : 15.09.2022

PER COURT :-

Heard learned counsel for the applicant and learned counsel for respondents.

2 Learned counsel for the applicants submits that , respondents have challenged the judgment and award passed by Member, Motor Accident Claims Tribunal, Nanded, in M.A.C.P. No. 35 of 2019. Respondent No.1 has deposited the entire compensation amount before this Court. Deceased was Karta of the family. Applicant No.1 is widow of deceased whereas applicant Nos. 2 to 4 are sons of deceased and applicant No.5 is mother of the deceased. After death of deceased, applicants

are facing financial problems. They need the amount for their daily expenses. Hence requested to allow the application.

3. Learned counsel for the applicants submits that, claim of the applicant Nos. 2 to 4 is rejected by the Tribunal. The compensation has been awarded to applicant No.1 i.e. widow of deceased and applicant No.5 mother of the deceased only. Learned counsel for the respondents strongly opposed for withdrawal of the amount on the ground that deceased was gratuitous passenger in the said vehicle. Risk was covered only to third party. The Tribunal has not considered these facts while awarding the compensation. Hence appeal is preferred by the respondents. If the amount is permitted to be withdrawn, it would be difficult for respondents to recover the amount. Hence requested to dismiss the application.

4. It is the contention of the learned counsel for the applicants that, Insurance Policy shows that insurance was covered for three persons including the driver. Deceased was the employee of the Company. Hence requested to allow the application.

5. I have heard both the learned counsel. Deceased

was the bread earning member of the family of the applicants. Applicant No.1 is widow of the deceased and applicant No.5 is old age mother of the deceased. Applicant No.1 is in need of money for her daily expenses and medical treatment of applicant No.5. Though it is the contention of learned counsel for respondent that risk of the deceased was not covered under the insurance policy, the said fact is to be considered at the time of final hearing because the Tribunal has considered this fact and has awarded the compensation. Hence I pass following order.

ORDER

(i) The application is allowed.

(ii) Applicant Nos. 1 and 5 are permitted to withdraw 50% amount along with accrued interest thereon out of award amount on furnishing undertaking.

(iii) Civil application is disposed of.

(S.G. DIGE,)
JUDGE

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