

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

903 CIVIL APPLICATION NO.14051 OF 2021
IN FA/4278/2016

VISHNU DHONDIRAM MISAL AND ORS
VERSUS
BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. THR ITS MANAGER,
AURANGABAD AND ORS

Mr P.C. Mayure, Advocate for applicants
Mr Swapnil Dargad, Advocate h/f Mr S.G. Chapalgaonkar, Advocate for
respondent no.1

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 18th February, 2022

PER COURT :

1. Mr Mayure, learned Advocate for the applicants/Insurance Company seeks leave to place on record copy of order dated 28.4.2017 passed by this Court in Civil Application No.5969 of 2017 in First Appeal No.4278 of 2016.
2. Leave granted. Copy of order dated 28.4.2017 passed in Civil Application No.5969 of 2017 is taken on record and marked as "X" for identification.
3. It is an application for withdrawal of amount moved by the applicants/ original claimants.
4. Heard Mr P.C. Mayure, learned Advocate for applicants and Mr S.S. Dargad, Advocate holding for Mr S.G. Chapalgaonkar, learned Advocate for respondent no.1.
5. It is pointed out by Mr Maryure, learned Advocate for applicants that this Court has granted liberty to the applicants to file application for withdrawal of remaining amount, if any, at the time of admission.

6. In view of liberty granted by this Court, the applicants/original claimants have moved this application for withdrawal of remaining amount of Rs.9,49,957/- along with accrued interest thereon. He submitted that there are six family members in the family of claimants. Even though they have received Rs.10,00,000/- in the past, they are in need of money to meet the family expenses. He submitted that this Court has stayed the operation and execution of the impugned judgment and award passed by the tribunal on condition to deposit 50% of the amount of compensation and accordingly, Rs.19,49,957/- is deposited by the Insurance Company in this Court. He urged to allow this application having regard to the peculiar circumstances which are brought on record.

7. Mr Dargad, learned Advocate appearing for respondent no.1 strongly opposed to allow this application. He pointed out that the Insurance Company has raised three defences, (i) contributory negligence (ii) improper calculation of income and (iii) non-deduction of the amount in view of provisions of Employees State Insurance Act. He submitted that the tribunal has committed an error in awarding exorbitant compensation without considering the abovesaid three defences raised by the Insurance Company. He submitted that as per the order passed by this Court, the appellant/Insurance Company has deposited 50% of the amount of compensation and complied with the order passed by the tribunal. The claimants have already withdrawn Rs.10 lakhs. There is no need to allow this application. He submitted that he is ready to work out the matter.

8. I have considered the submissions of learned Advocates for respective parties. Perused the impugned judgment and award dated 17.8.2016 passed by the Member, M.A.C.T. Aurangabad in M.A.C.P. No.523 of 2012.

9. The tribunal was pleased to award compensation of Rs.28,50,880/- to the original claimants with interest @ 9% per annum from the date of filing of petition till realisation of amount of compensation. The impugned judgment and award is challenged by the appellant/Insurance Company on various grounds. As the appeal is under scrutiny at the hands of this Court, at this stage, it would not be appropriate to touch the merits of the appeal. That exercise will be done at the time of final hearing. The question is about payment of balance amount lying in this Court. The applicants have already received Rs.10 lakhs as per the order dated 28.4.2017 passed by this Court.

10. By looking to the large number of family members in the family of the claimants and looking to the difficulties faced by them due to COVID-19 Pandemic, it is necessary to allow the applicants to withdraw atleast Rs.5,00,000/- out of the balance amount lying in this Court, by directing the applicants to furnish usual undertaking to the satisfaction of the Registrar (Judicial) of this Court, which would meet the ends of justice.

ORDER

(i) The Civil Application is partly allowed;

(ii) The applicants/original claimants are hereby allowed to withdraw Rs.5,00,000/- (Rs.Five lakhs only) out of the balance amount lying in this Court, on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court.

(iii) It is made clear that no further application for withdrawal of amount shall be entertained by this Court.

- (iv) Civil Application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

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