IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CIVIL APPLICATION NO.13247 OF 2021
IN FA/1723/2021

DATTRAO RANGNATH KUNDGIR AND ANR

VERSUS

L AND T GENERAL INSURANCE CO. LTD.,
THR THE AUTHORIZED SIGNATORY, AURANGABAD AND ORS
…

Advocate for Applicants : Mr Suhas Shirsat h/f Mr P.C. Mayure
Advocate for Respondent No.1 : Mr S.S. Dargad h/f Mr S.G. Chapalgaonkar

CORAM : SHRIKANT D. KULKARNI, J.
DATE : 30th March, 2022

PER COURT :

1. Heard Mr Suhas Shirsat holding for Mr P.C. Mayure, learned counsel for the applicants and Mr S.S. Dargad holding for Mr S.G. Chapalgaonkar, learned counsel for respondent No.1.

2. The learned counsel for the applicants submitted that it is a death claim. The applicants are parents of the deceased son. The accident took place in the year 2021. The applicants have not received any compensation. He submitted that whatever defences raised on behalf of the insurance company are taken into consideration by the Tribunal and turned down the same. He therefore, urged to allow this application for withdrawal of amount of compensation.

3. Mr S.S. Dargad holding for Mr S.G. Chapalgaonkar, learned counsel for respondent No.1 strongly opposed to allow this application. He submitted that the deceased was traveling in a trolley attached to the tractor in the capacity of gratuitous passenger. The risk of the deceased was not covered by the

insurance policy of the tractor which was insured with the appellant. He submitted that the claimants have also changed its stand dramatically which speaks doubt about the death of the deceased and contrary to the police papers. He submitted that the insurance company of the tractor and the insurance company of the trolley have examined witnesses in support of their defence. The Tribunal has not considered the defence evidence and turned down the same. He submitted that the Tribunal has awarded exhorbitant compensation having regard to the defence taken by the insurance company, the application may be rejected and the appeal may be expedited for final hearing.

4. I have considered the submissions of both the sides and perused the impugned Judgment and award passed in M.A.C.P. No. 11/2013 dated 25th March, 2021. The Tribunal has awarded compensation of Rs. 8,50,400/- in favour of the original claimants with interest @ 7% per annum. Accordingly, the insurance company has deposited the amount under the award with accrued interest thereon.

5. It is a death claim. The applicants/original claimants happened to be the parents of the deceased. By looking to the large number of pendency of appeals, it is not possible for this Court to take up this appeal for final hearing in near future. As such, this application for withdrawal of compensation needs to be considered.

6. On perusing the impugned Judgment and award passed by the Tribunal, it is evident that the Tribunal seems to have considered the defence raised by the insurance company and turned down the defence that the deceased was travelling in a trolley as a gratuitous passenger. At this stage, I

am not supposed to touch the merits of the appeal. By considering that it is a death claim and applicants are the parents of the deceased, I am of the view to allow the claimants to withdraw 50% amount of compensation which would meet the ends of justice and also protect the interest of the insurance company.

ORDER

(A) The application is hereby allowed as under :-

(i) The applicants/claimants are permitted to withdraw 50% amount of compensation with accrued interest thereon on furnishing usual undertaking with the Registrar (Judicial) of this Court.

(ii) The civil application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

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