

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.19201 OF 2022
IN
FIRST APPEAL (STAMP) NO.8110 OF 2016**

Smt. Rekha Parmeshwar Shinde and
Ors.

...Applicants

Versus

ICICI Lombard General Insurance Co.
Ltd.

...Respondents

...

Mr. Nitin Jagtap with Mr. Pawan Patil for the Applicants
Mr. Rajesh Kanojia with Ms Nitika Singh i/b. M/s. Res Juris for the
Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 17th OCTOBER, 2022.

P.C. :-

1. The Applicants herein, who are the original Claimant Nos.1 and 2 have sought withdrawal of the compensation deposited by the Appellant-Insurance Company.

2. Learned counsel for the Appellant -Insurance Company has opposed the application mainly on the ground that the offending vehicle was not involved in the accident. The records reveal that one Parmeshwar Shinde, husband of Applicant No.1 had expired on

14/12/2010 in view of the injuries sustained in the accident. Crime No.464 of 2010 was registered against the driver of an unknown vehicle for driving the vehicle in a rash and negligent manner and causing death of said Parmeshwar Shinde. Crime was investigated by Gurunath Haridas Bhoge, who was examined by the Claimant as CW4. Evidence of this witness prima facie indicates that in the course of the investigation it was revealed that the offending vehicle bearing No.MH-12/DT-635 was involved in the accident. Accordingly, he has filed the charge sheet against the driver of the said vehicle for offences punishable under Sections 279 and 304 A of the IPC.

3. The records prima facie indicate that the driver and owner of the vehicle have admitted involvement of the vehicle in the accident. Considering the above facts and circumstances, in my considered view prima facie the Applicants being widow and the child of the deceased cannot be deprived of the compensation on the grounds raised in the appeal memo.

4. Having considering the reasons stated in the application and the grounds raised in the appeal memo, the Applicant No.1 is permitted to withdraw 30% of the compensation with proportionate

interest accrued thereon subject to filing of an undertaking that the amount shall be refunded with interest in the event the Appellant succeeds in the appeal. The Applicant No.2 is a minor and hence I am not inclined to allow any withdrawal of compensation at this stage.

5. Application stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)

MEGHA
S
PARAB

Digitally signed
by MEGHA S
PARAB
Date:
2022.10.20
14:08:20
+0530