IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3537 OF 2022
IN
FIRST APPEAL (STAMP) NO.3842 OF 2014

Omkar Nivrutti @ Baban Dond and Anr. ..Applicants
Versus
United India Insurance Co. Ltd. and Anr. ...Respondents
.....
Mr. T.J. Mendon for the Applicants
Mr. Rahul Mehta i/b. M/s. KMC Legal Venture for the Respondent No.1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 9th JUNE, 2022.

P.C.:-

1. By this Application, the Applicants, who are the original Claimant Nos.2 and 3 have sought to withdraw compensation deposited by the Appellant-Insurance Company.

2. By order dated 11/02/2020 this Court had allowed original Claimant No.1 to withdraw 1/3rd of 50% of compensation and since Applicants (original Claimant Nos.2 and 3) were minor, 2/3rd of 50% of the compensation was ordered to be deposited in fixed deposits. It is stated that the Applicants have now attained the age of majority.

They are pursuing their higher education and that they need money for education and other expenses.

3. The Appellant has challenged the impugned judgment mainly on the ground that the offending vehicle, which was a transport vehicle was used for hire and reward purpose. Learned counsel for the Appellant-Insurance Company opposed the application on the ground that the Appellant is not liable to indemnify the insured for breach of terms and conditions of the policy. Even if the defence is accepted, the Appellant will have to pay the compensation and recover the same from the insured. Hence, the Applicants cannot be deprived of the compensation, which is required by them to meet their educational expenses.

4. Under the circumstances, 2/3rd of 50% of the compensation, which was ordered to be deposited in fixed deposit in a nationalised bank by order dated 11/02/2020 is allowed to be distributed to the Applicants (original Claimant Nos.2 and 3) in equal proportion along with proportionate interest accrued thereon.

5. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)