S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST.) NO. 1868 OF 2015
WITH
INTERIM APPLICATION NO. 3465 OF 2019
IN
FIRST APPEAL (ST.) NO. 1868 OF 2015
WITH
INTERIM APPLICATION NO. 10143 OF 2022
IN
FIRST APPEAL (ST.) NO. 1868 OF 2015
WITH
CIVIL APPLICATION NO. 283 OF 2015
IN
FIRST APPEAL (ST.) NO. 1868 OF 2015

Nirmala Pratap Giri and Ors. .. Applicants
In the matter Between:

National Insurance Company Ltd. .. Appellant
Versus
Nirmala Pratap Giri and Ors. .. Respondents

....

- Ms. Ishita Bhok i/by Asim Vidyarthi for Appellant
- Mr. Tejal Hartalkar for Intervenor in IA 3465/2019
- Ms. Rina Kundu for Respondent Nos. 1 to 3

....

CORAM : MILIND N. JADHAV, J.
DATE : JULY 22, 2022

P.C.:

INTERIM APPLICATION NO. 10143 OF 2022

1. In the present case applicants have filed Interim Application (St.) No. 10143 of 2022 for seeking withdrawal of the amount out of the amount deposited as compensation in the trial court. Learned counsel for the applicants submits that this is the second application seeking withdrawal. She submits that by order dated 04.08.2015 applicants were permitted to withdraw an amount of Rs.8,32,350/- out of the deposited amount of Rs.33,29,400/- from the trial court. She submits that reasons stated in the application are serious and withdrawal of any such amount shall enure to the benefit of the applicants. She submits that applicant No. 4 who was the mother of the deceased, expired on 21.09.2021. She submits that the applicant No.1, widow is a housewife and is not earning. At present it is only the applicant No.3 i.e. the youngest son of the deceased who is taking care of the family.

2. Ms. Bhok, learned counsel for the Appellant -Insurance Company submits that though the respondents were served with a copy of the application on 11.04.2022, they have not filed any affidavit-in-reply to the application. She submits that she needs to seek instructions from the Insurance Company. She submits that she has a copy of the application which was duly served upon the respondent. From the record it appears that this application appeared on board on 08.07.2022 then it was stood over to today.

3. The reasons given in the Interim Application in Clauses (G), (H) and (I) are reproduced below:

"G. It is submitted that applicant no.2 and 3 were minor at the time of accident and they were studying. Applicant no.1 is housewife. Therefore, to maintain regular family expenses applicant took loan from their relatives. Applicant no.1 is housewife. Health of applicant No.1 is not good. After getting compensation amount applicants paid that loan amount taken from relatives. Rest of the amount spent in the marriage of applicant No.2. Therefore, applicants have no savings now.

H. It is submitted that after marriage of applicant No.2 she is residing at her matrimonial house.

I. It is submitted that applicant No.3 was doing job. Due to Covid-19 lockdown he lost his job. Now he is doing a small job on temporary basis. He hardly earns Rs. 10,000/- from that job. So that income is not sufficient to maintain all expenses of applicants. Applicants are pulling their life with great difficulty. Therefore, applicants are praying further withdrawal of remaining compensation amount. The applicants therefore pray that :

Prayer -

a. Permission may be given to the applicants to withdraw remaining compensation amount Rs.24,97,050/- which is put in fixed deposit in the name of Member M.A.C.T., Thane.

b. Any other relief which the Hon'ble court may deem fit and proper may be granted."

4. From the above it is clear that the applicants are in dire need of funds for maintaining their regular family expenses.

5. Ms. Kundu, learned counsel for the applicants submits that she shall file the affidavit of service of effecting service of the application and receipt of the application on the appellant within a period of one week from today.

6. Considering the fact that the Insurance Company was served with a copy of the application on 13.04.2022, as also the application having appeared on board on 08.07.2022, on which date Mr. Vidyarthi had appeared on behalf of the appellant; till date the Insurance Company has not filed any affidavit-in-reply.

7. In view of the aforesaid, I am inclined to allow and permit the applicants to withdraw an amount of Rs.6,00,000/- so as to enure to their day to day maintenance, living and livelihood. Applicants shall make the application before the trial court within a period of two weeks from today. If the application is made by the applicants before the Motor Accident Claims Tribunal (M.A.S.T.), Thane, the learned Judge of the said court is directed to grant the application and permit the applicants to withdraw the aforesaid amount within a period of one week thereafter. It is clarified that since applicant No.4, mother of the deceased has expired in the year 2021; hence from the amount of compensation which is now released to the applicants, her share of 10% will be distributed to the other 3 applicants equally.

8. Interim Application No. 10143 of 2022 stands disposed.

INTERIM APPLICATION NO. 3465 OF 2019

9. This Interim Application No. 3465 of 2019 has been preferred by the eldest son of the deceased. Ms. Kundu for respondent Nos. 1 to 3 points out that the eldest son was 22 years old at the time of accident on 21.12.2009. He was not a party to any of the proceedings before the trial court. She, however, submits that she has recently come on record sometime in March-2022 after the case was transferred to her from the earlier Advocate. She fairly submits that she has not filed reply to this application.

10. Respondents are therefore directed to file their affidavit-in-reply within a period of 4 weeks from today. Rejoinder, if any, to be filed within a period of two weeks thereafter.

11. Interim Application No. 3465 of 2019 shall thereafter be considered on its own merits.

12. Stand over to **12th September, 2022**.

[MILIND N. JADHAV, J.]

SONALI SATISH KILAJE
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