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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 16538 OF 2022
IN
FIRST APPEAL(ST) NO. 37261 OF 2018

Smt. Kirti Pravin Chaudhari & Ors. ....Applicants/Claimants
V/s.
Iffco-Tokio General Insurance Co.Ltd. .....Respondent

Mr. Pritesh K Bohade, Advocate for the Applicants.
Mr. Rajesh Kanojia, Advocate a/w. Ms. Nikita Singh, Advocate i/b. Res Juris for the Applicant.

CORAM : GAURI GODSE, J.
DATE : 29th AUGUST, 2022.

P.C.

1. This Interim application is filed by respondent nos. 1, 2, 5 and 6 for withdrawal of the amount of compensation.

2. By order dated 23rd January, 2022 passed in Interim Application No. 1 of 2020 the applicants were allowed to withdraw 25% of the amount deposited by the insurance company as per apportionment given in clause no. (3) of the operative part of the impugned judgment and award dated 20th December, 2017. The applicants

were allowed to withdraw the amount on submitting an undertaking that the amount withdrawn shall be returned with prevailing rate of interest in the event the appeal being allowed. By the said order the remaining amount was directed to be deposited in the fixed deposit of any nationalised bank. The applicant by this application have prayed for withdrawal of some further amount.

3. It is submitted on behalf of the applicants that they are suffering hardship, as the deceased was the only earning member of the family and the applicant no. 1 being widow, applicant no. 2 being minor daughter and applicant nos. 5 and 6 being aged parents of the deceased, are unable to survive for sufficient source of income. It is further submitted that the applicants have also suffered due to the pandemic for two years and the family is in huge financial difficulty.

4. There is no affidavit in reply filed on behalf of the insurance company opposing this application. However, the learned Advocate for the insurance company submits that since it is case of respondent nos. 3 and 4 that there was no negligence on the part of driver of the offending vehicle, insurance company will not be liable to pay any compensation. It is further submitted on behalf of the insurance company that there is contributory negligence on the part of the vehicle in which the deceased was travelling. The learned Advocate further relied upon Section 170 of

the Motor Vehicles Act, 1988 and submits that since the owner and driver of the offending vehicle have filed their statement of defence in the tribunal and contended that there was no negligence on the part of the offending vehicle, same grounds are available to the insurance company and in such circumstances the insurance company shall not be liable to pay any compensation. Hence it is further submitted that in the event any further amount is allowed to be withdrawn it will amount to making the First Appeal itself infructuous.

5. I have carefully perused the impugned judgment and award. So far as the case of contributory negligence is concerned the same is negatived by the tribunal for want of evidence. So far as the other ground that are sought to be made out in this application are grounds on merits of the appeal which shall be decided at the time of final hearing of the Appeal. With respect to the ground made out on behalf of the insurance company that since there was no negligence on the part of the offending vehicle the insurance company is not at all liable to pay any compensation, it is argued by the learned counsel for the insurance company that since it is a law point the same may be taken into consideration at this stage. I feel the same will have to be considered at the time of final hearing of the First Appeal, as the same will also require appreciation of evidence.

6. So far as the ground of contributory negligence is concerned it is specifically negatived by the tribunal by holding that there is no evidence adduced. It is also necessary to record that there is no dispute raised with respect to the calculation of the compensation amount arrived at by the tribunal on the basis of the total loss of income which is calculated in the impugned judgment.

7. In such circumstances it is necessary in the interest of justice to allow the applicants to withdraw some further amount from the amount already deposited in the tribunal considering the fact that the deceased was the only earning member of the family and applicant no. 2 is minor and applicant nos. 5 and 6 are dependent parents of the deceased. Considering the facts and circumstance, it will be in the interest of justice to allow the applicants to withdraw further 25% of the total amount deposited by the insurance company, on submitting an undertaking that the amount will be brought back with prevailing rate of interest, in the event the First Appeal is allowed.

8. By the impugned judgment and award Rs. 25 lakhs is already directed to be invested in fixed deposit in the name of claimant no. 2 who is minor in any nationalised bank till she attains majority. By the impugned judgment and order it is

further directed that the claimant no. 1 who is mother of claimant no. 2 will be entitled to receive monthly interest accrued on the above investment on behalf of claimant no. 2.

9. By the impugned judgment and award it is further directed that the remaining amount of Rs. 33,56,128/- including interest and costs ("the remaining amount") be paid to the applicant no. 1 and applicant nos. 3 and 4 equally. As per order dated 23rd January, 2020 passed in Interim Application No. 1 of 2020 the applicants have already withdrawn 25% of the remaining amount that was deposited by the insurance company.

10. Hence the following order is passed:

(i) Applicants are allowed to withdraw further 25% of the remaining amount of Rs. 33,56,128/- with accrued interest that is deposited by the insurance company, on submitting an undertaking that the withdrawn amount will be brought back with prevailing rate of interest in the event the First Appeal is allowed.

(ii) After withdrawal of the said further 25% of the remaining amount, the balance amount out of the remaining amount of Rs.

33,56,128/- with accrued interest, shall be invested in a nationalised bank and shall remain invested till further orders.

(iii) Civil Application stands disposed of in the above terms.

[GAURI GODSE, J.]