

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3535 OF 2021
in
FIRST APPEAL NO. 29 OF 2021**

Ravindra Tulshiram Raut @ Ravi Tulsiram Raut
and anr.Applicants
Org. Respondent Nos.1 and 2.

In the matter of :
HDFC ERGO General Insurance Co. Ltd. Appellant
Versus

Shri Ravi Tulsiram Raut and ors.Respondents

Mr. Abhijit Kulkarni along with Mr. Aditya Mahadi, Advocate for the Appellant.

Ms. Sangeeta S. Salvi, Advocate for Applicants/Org. Respondent Nos. 1 and 2.

CORAM : S. G. DIGE, J.

DATE : 13th DECEMBER, 2022.

P.C. :

1. Heard learned counsel for the applicants and learned counsel for the appellant.

2. Learned counsel for the applicants submits that the Commissioner for Employees' Compensation and Judge, Labour Court, Mumbai (for short "the trial court") has allowed the claim

petition of the applicants and awarded compensation in favour of the applicants. The said order is challenged by the respondent-insurance company, which is pending before this Court. The appellant has deposited the entire award amount with accrued interest thereon before the trial court. The deceased was the only son of the applicant. He was the sole earning member in the family. After his death, the applicants are facing difficulty in their day-to-day activities. Earlier, this Court has permitted the applicants to withdraw Rs. 8,00,000/- , out of the deposited amount, but due to old age and increasing inflation, the applicants are facing problems. Hence, requested to allow the application.

3. Learned counsel for the appellant strongly objected to allow the application on the ground that the appellant has challenged the impugned order on the ground that the driver of the vehicle had fake driving license. The said fact was put up before the trial court but it was not considered by the trial court. If the appellant succeeds in the appeal, it would be difficult for the appellant to recover the amount from the applicants. Already an amount of Rs.8,00,000/- is permitted to be withdrawn. Hence, requested to dismiss the application.

4. I have heard both learned counsel. The appellant's main contention in the appeal is that at the time of the accident, the driver was not holding effective and valid driving license. If that be so, the appellant can recover the amount from the owner of the vehicle. Admittedly, there is death of applicants' son, who was the only earning member in the applicants' family. The applicants are facing difficulty in their day-to-day activities due to shortage of money. Hence, I pass the following order :

1. The application is allowed.
2. The applicants are permitted to withdraw the amount of Rs.4,00,000/- out of the amount deposited by the appellant on furnishing undertaking.

The application is disposed of.

(S. G. DIGE, J.)