

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application (F) No.2048/2022 IN First Appeal No.395/2021

Cholamandalam MS General Insurance Co.Ltd V Smt. Shaheda wd/o Mohd. Firoj Ali
and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mrs. Mrunal Naik, Advocate for appellant.
Mr. M.A. Randive, Advocate for resps. no.1 to 4.
Mr. P.J. Khumkar, Advocate for resp no.5.

CORAM : ABHAY AHUJA, J.
DATE : 15-09-2022

Heard.

2. By this application, the non-applicants in the application are seeking to withdraw an amount of Rs. 69,46,489/- deposited by the Appellant/Insurance Company in this Court on 30-09-2021.

3. Mr. Randive, learned Counsel for the claimants submits that the award for the said amount has been passed by the MACT, Nagpur in favour of the claimants. He submits that the applicants are the legal heirs of the deceased and the amount is needed for their education and daily household expenses and for the marriage of the daughters. It is stated in the application that the applicants have no source of income and they are depending on the relatives and therefore they have no alternative but to withdraw the amount deposited in this Court to meet their needs.

4. On the other hand, Mrs. Naik, learned Counsel for the

appellant/Insurance Company, opposes the application for 100% withdrawal of the amount. Learned Counsel submits that the Tribunal has failed to consider the aspect that the deceased was very close to the date of retirement and that has not been factored. Learned Counsel further submits that at the time of filing of the claim, the wife and the son of the deceased were not dependent. She submits that the son was admittedly employed with MSEDCL and could not be said to be a dependent. Further that the wife has her own business and she also could not be said to be a dependent. Learned Counsel submits that therefore the averment that the applicants have no source of income and are dependent on the relatives for their livelihood is not true. She submits that once an amount has been withdrawn it would be next to impossible to recover the same in the event the appeal is decided in favour of the appellant. In this view of the matter, she submits that some amount may be allowed to be withdrawn subject to stringent conditions in the event the order of the Tribunal is set aside or modified.

5. I have heard the learned Counsel for the parties and also perused the application and the grounds in the appeal. There is no doubt that the son who is also a claimant is not dependent. He is an Class-IV employee of the MSEDCL. It is also observed from the cause title of the appeal that the respondent no.3, one of the daughters, is also doing business. The only person who appears to be studying is respondent no.4. Having heard the learned Counsel for the parties and considering the amount deposited in

this Court, the following order is passed :-

ORDER

- a. 25% of the amount deposited in this Court is allowed to be withdrawn by respondent nos.1 and 4 in equal shares subject to furnishing solvent surety/security for the said withdrawal.
- b. Let the solvent surety/security be furnished within a period of four weeks and upon furnishing of the same, the registry is directed to disburse the said amount within a period of two weeks thereafter.
- c. Application stands disposed in above terms.

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Admit.

2. Registry is directed to call for record and proceedings within a period of four weeks.
3. By consent of the parties, private paper book is dispensed with.
4. Let the Memo of Appeal along with compilation of documents and evidence be served on the respondents within a period of two weeks thereafter and an affidavit of service with tangible proof be filed in this Court.
5. List the matter on 10-11-2022.

(Abhay Ahuja, J.)