

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3207 OF 2023

Hinesh Dilipkumar Sadhavani & Anr. ...Petitioners

V/s.

The Manager, ...Respondents
SBI General Insurance Co. Ltd.
& Anr.

Mr. Rushikesh Kale for Petitioners.

Ms. D. Shalini Shankar for - Respondent/SBI
General Insurance Co.

CORAM: MADHAV J. JAMDAR, J.

DATE: 12th October 2023

P.C.:

1. Heard Mr. Kale, learned Counsel appearing for the Petitioner and Ms. D. Shalini Shankar, learned Counsel appearing for Respondent No. 1 i.e. S.B.I. General Insurance Company Limited.

2. The Petitioner, who is the original claimant in Motor Accident Claim Petition No.145 of 2016 has challenged legality and validity of order dated 9th January 2023 passed by the learned Motor Accident Claims Tribunal at Solapur in Miscellaneous Application No. 66 of 2022 in M.A.C.P. Darkhast

No.145 of 2016. By the impugned order, application for withdrawal of the amount of compensation deposited before the learned Tribunal has been rejected on the ground that the said application is required to be filed in First Appeal No.131 of 2019.

3. The said Motor Accident Claims petition was filed as the Petitioners' grandson died in an accident. The learned Tribunal awarded a compensation of Rs.12,12,400/- alongwith interest @6% per annum by judgment and award dated 5th May 2018.

4. The Respondent No.1- S.B.I. Insurance Company Limited filed First Appeal No. 131 of 2019 and said Appeal is admitted and by order dated 3rd September 2019 passed in Civil Application No. 436 of 2019 in First Appeal No. 131 of 2019, stay to the said judgment and award dated 5th May 2018 was granted on condition of depositing of the entire awarded amount with interest in the Tribunal. By said order dated 3rd September 2019 passed in said Civil Application No.436 of 2019, a learned Single Judge granted liberty to the Respondent No.1- claimant to prefer an appropriate application for withdrawal of the compensation amount. Thereafter, the said First Appeal was dismissed by conditional order dated 18th February 2020 against the present Petitioners, who are Respondents in the said Appeal.

5. As the First Appeal is dismissed against the Petitioners, who are Respondent Nos.1 and 2, they filed an application

before the learned Tribunal seeking withdrawal of entire compensation amount and same application has been dismissed. However, the First Appeal is dismissed as against the present Petitioners and therefore, they cannot prefer any application in the said First Appeal and therefore the present Writ Petition.

6. Learned Counsel appearing for Respondent No. 1 i.e. the Appellant in said First Appeal No. 131 of 2019 states that she is in the process of filing an application for restoration of the said First Appeal against the present Petitioners. Learned Counsel appearing for Respondent No.1 strongly opposed any withdrawal of the amount. However, the factual position on record shows that the First Appeal has been dismissed as against concerned Respondents - present Petitioners.

7. In the said First Appeal, the original claimant is Smt. Anju Shrichand Rohira and, she has passed away on 17th October 2020 and the present Petitioners are her sons against whom no appeal is pending and hence no stay is operating. Therefore, the learned Tribunal has erred in observing that the Petitioners are required to move an application before the High Court for withdrawal of the compensation amount since the appeal itself does not survive against the present Petitioners or the original claimants. It is to be noted that a learned Single Judge while admitting the First Appeal and granting stay has given specific

liberty to the present Petitioners to apply for withdrawal of the compensation amount. Accordingly, the Petitioners are allowed to withdraw the entire compensation amount deposited in the Tribunal alongwith accrued interest. However, the Petitioners shall file an affidavit/ undertakings in the Tribunal and also in this Writ Petition stating that if the said First Appeal No. 131 of 2019 is restored and if any order is passed directing deposit of said amount, then the entire amount with interest will be deposited in this Court or in the learned Tribunal as per further orders, if any, in the First Appeal No. 131 of 2019. Such affidavit/undertaking should be filed in this Writ Petition within two months from today. The similar affidavit/ undertaking also be filed in the learned Tribunal and after filing of such affidavit/undertakings in this Court and before the learned Tribunal, the learned Tribunal to allow the Petitioners to withdraw the entire compensation amount alongwith accrued interest thereupon.

8. The Writ Petition is disposed of in above terms with no order as to costs.

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

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GOPAL DUSANE
Date: 2023.11.22
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