

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

CIVIL APPLICATION (F) NO.35 OF 2023
IN
FIRST APPEAL NO.804 OF 2022

APPELLANT : The S. B. I. General Insurance,
(Ori.Res. No. 2) through its Branch Manager “Sanjay
Tidke Bhawan”, Vijay Colony,
Rukhmini Nagar, Beside Yadgir
Hospital, Congress Nagar Road,
Amravati. Tq & Dist; Amravati (M.S)
Through its Nagpur Branch, At 148,
3rd floor above S.B.I. Personal Banking
Branch Thapar Enclave, Maharaj Bag,
Ramdas peth, Nagpur.

..VERSUS..

RESPONDENTS : 1. Smt. Shubhangi Ajay Pawar,
(Ori.Peti.No.1 to 3) Aged 40 Yrs Occ-Home maker

2. Vashistha Ajay Pawar,
Aged about 15 yrs, Occu-Education

3. Ku. Sai Ajay Pawar,
Aged- 9Yrs, Occu- Education
(Respondent No.1 is mother Guardian
for Minors Respondent No.2 and 3)

(All R/o. Pawar Nagar, Near Gopal
Nagar, Tq and Dist Amravati)

4. Vijay Ratanlal Taori,
Aged- 40yrs, Occu-Driver/Owner, Plot
no.3, Anmol Nagar near, Akshay patra
Vathora Squar Nagpur.

Mrs Mrunal Naik, Advocate for the Appellant.
Mr Nilesh Bhaurao Raut, Advocate for the Respondents No.1 to 3.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.

DATE : 17th JANUARY, 2023.

ORAL JUDGMENT : (PER : VINAY JOSHI, J.)

. Heard learned Counsel appearing for the parties.

2. This is an application of original claimants seeking permission to withdraw the compensation amount, which has been deposited by Appellant insurer in this Court. This application is strongly resisted by Mrs Naik, learned Counsel appearing for Appellant insurer, primly contending that the offending vehicle, which was insured with the company, was never involved in the accident.

3. We have gone through the impugned judgment as well as the entire record and proceedings. On 14.09.2014, while deceased Ajay Pawar was travelling by Bolero Car bearing registration No.MH-30-AF-5738 from Amravati to Akola, the car was made to halt due to burst of tyre. While deceased alongwith his two companions alighted from the

vehicle to change the tyre, at that time, one white colour Maruti Swift car came in high speed, gave dash to Ajay, who died on the spot. On such occurrence, widow alongwith two minor children of deceased have applied to the Motor Accident Claim Tribunal (for short "Tribunal") in terms of Section 166 of the Motor Vehicles Act, 1988 (for short "M. V. Act"), claiming compensation on account of death of Ajay in vehicular accident. In claim petition, opponent No.1 was owner-cum-driver of swift car whilst opponent No.2 was insurer with whom, swift car was admittedly insured.

4. In claim petition, copy of First Information Report (FIR), Spot Panchanama, Inquest Panchanama, Insurance Policy and related documents have been produced. The defence of owner of offending vehicle and insurer was about non-involvement of swift car in the accident. The Tribunal has considered the said defence and ultimately held the involvement of offending car and accordingly, passed the Award by quantifying compensation to the tune of Rs.75,70,000/- alongwith interest @ 7% per annum from the date of petition. In this appeal, the Insurance Company has

deposited Rs.1,16,29,842/-

5. In natural course, the original claimants, who are widow and two minor children of deceased, are well entitled for withdrawal of amount without much resistance. However, in this case, a specific defence has been taken by owner and insurer about non-involvement of Maruti Swift Car bearing registration No.MH-31-DC-7294.

6. We have heard exhaustive submissions of both sides only from the point to see the *prima facie* involvement of swift car so as to decide entitlement for withdrawal. Undeniably, on the date of accident itself within few hours FIR has been lodged by one of the eye witness Mr Raut, wherein he has stated that he has witnessed white colour swift car giving dash to Ajay. He has stated in FIR that though it was dark, in the tail light of vehicle, he has seen the registration number of offending car as MH-31-DC-7294. Before Tribunal, the informant, who was the eye witness to the occurrence has led evidence in the similar fashion. Besides that in Trial Court, the claimants have led evidence of concerned Investigating Officer. We have gone through his

evidence, wherein he deposed that after accident, he obtained address of the owner of offending vehicle and approached to his residence, but the owner and vehicle was missing. After few days, he again went and found that the vehicle appears to have been repaired at front portion and he found it to be doubtful. Moreover, it is submitted on behalf of claimants that the Police have completed investigation and having been found sufficient material about involvement of offending vehicle, filed a charge-sheet against original Respondent No.1 for the offence punishable under Section 279 and 304A of the Indian Penal Code, 1860. On the strength of said material as well as finding recorded by Tribunal, it has been argued that the involvement has been proved, and thus, the claimants are entitled for withdrawal.

7. On the other hand, Mrs Mrunal Naik, learned Counsel appearing for insurer resisted this application by contending that since involvement of vehicle has not been proved, it is not desirable to release the amount before decision of appeal. It has been stated that the accident occurred in dark hours, and therefore, it was not possible to

see registration number of the vehicle which gave dash. It has been argued that besides informant, no other eye witness has been examined to corroborate the testimony of informant about involvement of offending vehicle. It is submitted that as per Spot Panchanama, brake mark of tyre was having width of 8 inches whilst as per owner of swift car, the width of tyre of swift is 5.6 inches and thus, there is no possibility of involvement of swift car. It is submitted that the accident was so severe that it is not possible by a smaller vehicle like a swift car.

8. At the inception, we made it clear that since the appeal is pending for adjudication, we are not making exhaustive comments on the issue involved. *Prima facie*, we find that within few hours from the occurrence, one of the eye witness has lodged report with specific description of car alongwith registration number. Obviously, the owner of offending vehicle is interested to deny involvement, therefore we do not wish to lay much faith on his interested words. Pertinent to note that on the basis of FIR, Police completed investigation concluding that the vehicle was involved and

filed charge-sheet against the owner of vehicle. Apparently, till date the owner has not put any grievance about filing of so called false FIR or charge-sheet nor approached for quashing of the same. Yet, the criminal case is pending before Trial Court. Moreover, the Investigating Officer led evidence that when he approached to the owner of offending vehicle, the vehicle was found to be repaired. Thus, *prima facie*, we found the involvement of vehicle in the accident. We must note that in written statement, the owner of swift car has admitted that at relevant night, he has passed from the said road and also stated in evidence that due to accident, some people tried to stop him. This also indicates the presence of the owner of offending vehicle on the spot at relevant time.

9. On the other hand, a lady with two minor children are coming before Court for seeking withdrawal of her rightful claim, which has been adjudicated by Tribunal. The very purpose of beneficial legislation is to provide means to a shelter-less family due to sudden death of bread winner. In the circumstances, we find absolutely no reason to withhold their money as it would put them in more misery than the loss

which they suffer due to death of *Karta* of the family. In view of above, we deem it desirable to allow partial withdrawal. Hence, the following order :

ORDER

- i) Civil Application is partly allowed.
- ii) The original claimants are permitted to withdraw the sum of Rs.60,00,000/- on furnishing undertaking to the concerned Tribunal that withdrawal is subject to the decision of appeal. Registry of this Court is requested to transmit amount of Rs.60,00,000/- to concerned Tribunal for its disbursal as directed.
- iii) On receipt of amount of Rs.60,00,000/-, Tribunal shall invest Rs.30,00,000/- in equal share in the name of two minor children through their natural guardian mother, till they attain majority, in any Nationalized Bank of the choice of guardian mother.
- iv) Guardian mother is entitled to receive periodical interest on said deposits for the maintenance of two minor children monthly or quarterly as per her choice.

v) The remaining amount of Rs.30,00,000/- be disbursed to the claimant widow.

vi) The Registry of this Court is directed to invest the remaining amount in fixed deposit.

10. The above observations are made only for the purpose of deciding the application for withdrawal of amount, which has no impact on the merits of appeal. Appellant is requested to file paper-book.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

TAMBE