

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

CIVIL APPLICATION (F) NO.301 OF 2023 IN
FIRST APPEAL NO.852 OF 2022

[Bajaj Allianz General Insurance Co. Ltd. ..V/s.. Smt. Vaishali wd/o. Aashish
Deshmukh and Ors.]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr D. N. Kukday, Advocate for Applicant/Appellant.
Mr D. V. Darpurkar, Advocate for Respondent Nos.1 and 2.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 6th MARCH, 2023.

1. By this application, the claimants – respondent Nos.1 and 2 are seeking permission for withdrawal of 75% of the amount of Rs.8,09,035/- alongwith accrued interest.

2. Said application is strongly opposed by the Mr Kukday, learned Advocate appearing for the appellant – Insurance Company. He invited my attention towards the order and award of the Court. While answering the issue No.3, it is held by the Tribunal that 90% liability of the respondent No.2 and 10% of the deceased. He submitted that the liability of insurance company is fixed only upto the 10%. As there is joint and several liability, he deposited the entire amount of compensation. Hence, application deserves to be rejected.

3. Heard learned Advocate appearing for the parties and perused the application as well as award.

4. There is no dispute that while answering issue No.3, the Tribunal has fixed the liability of the appellant - Insurance Company to the extent of 10%. While passing the operative part, it is further directed by the Tribunal that respondent Nos.1, 3, 6

and 7 are directed to deposit the aforesaid amount in equal proportionate by issuance of cheque in the name of petitioner No.1 (respondent No.1 herein). The Insurance Company - appellant has already deposited the amount of Rs.8,34,035/-. The amount of Rs.1,00,000/- is already directed to be deposited in FDR in any Nationalized Bank in the name of minor claimant respondent No.2. So Registry is directed to comply by depositing Rs.1,00,000/- in FDR in the name of minor claimant - respondent No.2 out of the balance amount.

5. Considering the grounds raised in the application and objection raised by the appellant – Insurance Company, it will be appropriate to permit the claimant respondent No.1 to withdraw 50% of the amount on usual undertaking stating that if this Court allows the appeal of the appellant - Insurance Company, she shall refund the amount to the appellant.

6. Civil Application No.301 of 2023 is disposed of.

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7. Record and Proceedings be called.

8. Appellant to file private paper-book within eight weeks after receipt of record and proceedings.

9. Appellant to take steps to serve the respondent Nos.3 and 4, whose notices are still awaited.

10. Place the matter for final hearing after paper-book is filed, its verification and after service of notice upon respondent Nos.3 and 4.

JUDGE