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

CIVIL APPLICATION (CAF) NO.431 OF 2023
AND
CIVIL APPLICATION (CAF) NO.556 OF 2023
IN
FIRST APPEAL NO.434 OF 2022

United India Insurance Company Ltd. through its Regional Manager, Regional Office, Nagpur
Vs.
Smt. Rupabai Rambhau Mohurle and others

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. C. A. Anthony, Advocate for the appellant.
Mr. Ajankya Shitut, Advocate h/f Mr. R. M. Tahaliyani, Advocate for respondent No.1.
Mr. A. R. Wagh, Advocate for respondent No.2.
Ms. Kirti Satpute, Advocate for respondent No.4.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 24/02/2023

CIVIL APPLICATION (CAF) NO.431 OF 2023
AND
CIVIL APPLICATION (CAF) NO.556 OF 2023

1. These applications are filed by the respondent No.1 and respondent No.4 for withdrawal of the compensation amount on the ground that the respondent No.1 has lost her son in an accident which took place on 24.11.2014, whereas respondent No.4 has lost her husband.

2. As per the contention of the appellant that learned trial Court has not considered the defence that driver of the offending vehicle was not holding valid

driving licence and erroneously saddled the liability of paying compensation on the shoulder of the Insurance Company and on other respondents i.e. owner and the driver. As per the contention of the respondent Nos.1 and 4, that though award was passed in their favour they have not received single penny towards the compensation. They have lost their near and dear one and there is nobody look after them. They are in need of money for their day to day affairs and they pray they be permitted to withdraw the amount.

3. The said application is strongly opposed by the learned Advocate Mr. Anthony for the appellant on the ground that the learned trial Court has not passed the directions regarding pay and recover. He submitted that now recently the Hon'ble Apex Court in the case of **Bajaj Alliance General Insurance Co. Ltd., Vs. Rambha Devi and others** reported in **2022 SCC OnLine SC 287** have taken different view and held that the principles laid down in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited, (2017) 14 SCC 663** needs to be revisited, and referred the matter to larger Bench. He submitted that in view of the observation of the Hon'ble Apex Court, the application deserves to be rejected and the amount deposited by the Insurance Company required to be secured as it is deposited before the Court.

4. Heard learned Advocate for the appellant as well as learned Advocate for the respondent Nos.1, 2 and 4.

5. The defence taken by the Insurance Company that driver was not holding valid driving licence. Admittedly, the respondent Nos.1 and 4 are the 3rd parties. It is between the owner and the Insurance Company. The appropriate directions can be passed regarding pay and recover after final hearing of the appeal, if the case is made out. At this stage, the original claimants respondent Nos.1 and 4 cannot be deprived of getting the compensation. Thus claimants are entitled to receive compensation on certain conditions.

6. In view of that Civil Application Nos.431 of 2023 and 556 of 2023 are deserves to be allowed. In the result, I proceed to pass following order.

ORDER

(i) Civil Application Nos.431 of 2023 and 556 of 2023 are allowed.

(ii) The respondent Nos.1 and 4 are permitted to withdraw 50% of the compensation amount along with the accrued interest on furnishing surety contending that if the order in the appeal is reversed then they would refund the amount of compensation.

(iii) The respondent Nos.1 and 4 are entitled to receive 25% each of the compensation.

(URMILA JOSHI-PHALKE, J.)

Sarkate