



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 1783 OF 2024
IN FA/4469/2023

Shri Anil Ramrao Patil Deceased And Anr
VERSUS

The New India Assurance Co Ltd

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Advocate for Applicant : Mr. Pawar Ajay D.

Advocate for Respondent No.1 : Mr. A. S. Usmanpurkar

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WITH

CIVIL APPLICATION NO. 13786 OF 2023
IN FA/4469/2023

CORAM : S. G. MEHARE, J.

DATE : 16.02.2024

PER COURT :

1. Heard the learned counsel for the applicants and the learned counsel for the respondents.

2. The learned counsel for the applicants submits that major sons are entitled to the compensation as per ratio laid down by the Hon'ble Supreme Court in the case of *National Insurance Company Ltd Vs. Birender And Others (2020) 11 Supreme Court Cases 356*. In the said case it has been held that "all or any of the

legal representatives of the deceased” can move application for compensation by virtue of S. 166(1)(c). It must necessarily follow that even a major married and earning sons of deceased being legal representatives have a right to apply for compensation and it would be bounden duty of the Tribunal to consider application irrespective of whether they were fully dependent on deceased or not, in accordance with law. However, quantum of compensation would depend on extent of their dependency on the deceased parent.

3. He submits that one son of the deceased is suffering from polio since birth. The second one is now suffering from cancer. They were helping the deceased/ to run a mess. However, after her death the mess has been closed. They were dependent on the deceased mother. Hence, they are entitled to withdraw the amount.

4. The learned counsel for the appellant submits that there was no pleading before the Tribunal that the applicants were assisting the mother for running her mess. In title clause, they

have mentioned that they have no occupation. In the circumstances it is doubtful whether the applicants were dependents on the mother to any extent. However, the Tribunal held them entitled to receive the compensation. So they may be entitled to compensation under the heads as given in the case of Prnay Shetti. Hence, the following order is passed :-

ORDER

- (i) The application is partly allowed.
- (ii) The applicants are entitled to withdraw 50% of the amount deposited along with accrued interest thereon on the undertaking that they will deposit the money if the judgment & order is reversed.
- (iii) Both shall get half share of the amount allowed to be withdrawn.

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5. Heard the learned counsel for the applicant and the learned counsel for the respondent/appellant.

6. The applicant had good and arguable points in the appeal. The entire amount of compensation has been deposited. Nothing remained to be deposited hence, the following order

- (i) The application is allowed.
- (ii) The execution and implementation of the impugned judgment and award is stayed till the conclusion of the appeal.

7. Call record and proceeding.

(S. G. MEHARE)
JUDGE

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