



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

904 CIVIL APPLICATION NO.10218 OF 2023
IN FAST/9776/2023 WITH CIVIL APPLICATION NO. 5118 OF
2023 IN FAST/9776/2023 WITH CIVIL APPLICATION NO.
5119 OF 2023 IN FAST/9776/2023

**SURAYYA BEGUM W/O RAUF SHAIKH AND ORS
VERSUS
RELIANCE GENERAL INSURANCE CO LTD TROUGH ITS
LEGAL MANAGER AND ANR**

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Advocate for Applicants : Mr. Adv. Pathan Ziya J. h/f Mr.
Shaikh Kayyum Najir.
Advocate for respective Respondent/s : Mr. Swapnil Patil h/f
Mr. R. H. Dahat.

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CORAM : S. G. MEHARE, J.
DATE : 01.03.2024

PER COURT :-

1. Heard the learned respective learned counsels for the parties.
2. Learned counsel for the appellant would submit that the learned Tribunal has incorrectly awarded 50% of the income of the deceased as future prospect as against the mandate of the Hon'ble Supreme Court in Pranay Sethi's case. Considering the age of the deceased and fixed income source as per the pronouncement, future prospect would not be more than 15%.

That apart, the deceased was the gratuitous passenger. Therefore, the insurer is not liable to pay the compensation.

3. Learned counsel for the applicants would submit that the Tribunal has correctly imposed the liability on the insurer/appellant. The applicants were the widow and dependent children. Their claim was genuine. Nothing was proved as argued before the Tribunal. Hence, they deserve to withdraw the compensation amount.

4. Considering the facts and circumstances of the case, the following order is passed :

ORDER

- (i) Civil Application is partly allowed.
- (ii) The applicants are allowed to withdraw 50% of the amount deposited with this Court on the undertaking that they would deposit the money if the judgment and award is reversed.
- (iii) All the applicants are entitled to equal share in the amount allowed to be withdrawn.
- (iv) The sons have been shown pursuing education and the wife is doing household, therefore, to

protect their interest, 50% of their share be deposited in Fixed Deposit for five (5) years in any of the nationalized bank of their choice with a right to receive the interest at quarterly rest.

Civil Application No.5118 of 2023 (Delay)

5. Heard the respective learned counsels for the parties.
6. Considering the reasons mentioned in the application, the delay deserves to be condoned.

ORDER

- (i) Civil Application is allowed.
- (ii) The delay caused in preferring the appeal stands condoned.
- (iii) Registry to register the appeal.

First Appeal Stamp No.9776 of 2023

7. Heard the respective learned counsel for the parties.
8. Issue notice to the respondents.

9. Learned counsel Mr. Shakh Kayyum waives service of notice for all respondents.

10. The appeal has been preferred on the ground of avoiding incorrect future prospect. The deceased was a gratuitous passenger in the offending vehicle. Therefore, insurer is not liable to pay the compensation. The respondents have been allowed to withdraw 50% of the amount deposited in this Court. There are grounds to consider in the First Appeal. Hence, the execution, implementation and effect of the impugned judgment and award is stayed till conclusion of the appeal.

11. List the matter in due course.

(S. G. MEHARE, J.)

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vmk/-