



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 12011 OF 2023
IN FAST/15608/2019

Janabai Yellappa Rapanwad And Ors

....Applicant

VERSUS

Hanuman Madhav Mahure And Anr

....Respondent

...

Mr. M. R. Shaikh h/f Mr. T. A. Quadri, Advocate for
Applicants

Mr. M. K. Goyanka, , Advocate for Respondent No. 2

...

CORAM : R.M. JOSHI, J

DATE : JANUARY 05, 2024

PER COURT :

1. This application is filed by claimants for withdrawal of entire amount of Rs. 10,46,329/- deposited by Appellant in this Court. Applicants are claimants and legal heirs/dependents of deceased Yellappa, who died in motor vehicle accident. It is the contention of Applicants that Applicant No. 1 is the widow of deceased and the Applicant Nos. 2 and 3 are the minor children. According to him, in order to look after the minor children, there is no source of income and as such, application be allowed.

2. Learned Counsel for Respondent/Original Appellant opposed application on the ground that Appeal has been filed raising challenge to the findings recorded by Tribunal regarding involvement of the vehicle in the accident as well as breach of condition of the policy on the ground that the driver of the alleged offending vehicle was not holding valid licence at the relevant time. It is his further submission that the issue of pay and recovery would also involve in the present case. Hence, this is not a fit case for permitting the Applicants to withdraw the amount. According to him, in any case, interest of Applicants is already secured with the deposit of entire amount of compensation in this Court.

3. *Prima facie* consideration of material on record indicates that the deceased was third party. As such, right of the claimants to get compensation may not affect on the ground of alleged breach of the conditions of the insurance policy. At the most, said issue can be raised for the purpose of pay and recovery. Applicant Nos.2 and 3 are minor. There is reason to accept contention of learned Counsel for

Applicants that for the purpose of their upbringing money is required.

4. Having regard to the aforesaid facts and circumstances, it is a fit case to allow Applicants to withdraw 75% of amount of compensation deposited by the Appellant in this proceeding. Applicant No. 1 is permitted to withdraw 1/3rd amount from 75% amount. Remaining amount be deposited in the fixed deposit equally till Applicant Nos. 2 and 3 attain majority. Applicant No. 1 would be entitled to receive quarterly interest on fixed deposits till minors attain majority. Withdrawal is allowed on submitting usual undertaking. Application stands disposed of.

(R. M. JOSHI, J.)

Malani