

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.11369 OF 2024
[FOR WITHDRAWAL OF AMOUNT]
IN
FIRST APPEAL NO.382 OF 2022

Digitally signed
by SATISH
RAMCHANDRA
SANGAR
Date:
2024.10.16
10:46:55
+0530

SATISH
RAMCHANDRA
SANGAR

Rajashri Shahaji Shete and Ors. ...Applicants

In the matter between:-

Reliance General Insurance Company Limited
Mumbai ...Appellant

V/s.

Rajashri Shahaji Shete and Ors. ...Respondents

WITH
INTERIM APPLICATION NO.2795 OF 2022
[FOR STAY]
IN
FIRST APPEAL NO.382 OF 2022

Reliance General Insurance Company Limited
Mumbai ...Applicant

In the matter between:-

Reliance General Insurance Company Limited
Mumbai ...Appellant

V/s.

Rajashri Shahaji Shete and Ors. ...Respondents

Mr.Siddharth Shitole:-	Advocate for Applicants (Respondent Nos.1 to 4).
Ms.Shalini Shankar:-	Advocate for Appellant Insurance Company.

CORAM : S. M. MODAK, J.

DATE : 10th OCTOBER 2024P. C. :-**FIRST APPEAL NO.382 OF 2022**

1. The Respondent Nos.1 to 4 are the Claimants. They are duly represented. The Respondent Nos.5 to 9 are not served because copies are not given to the Office.
2. Let, those copies be given within one (1) week and then, notices be issued returnable on 28th November 2024.
3. Call Record and Proceeding.

INTERIM APPLICATION NO.11369 OF 2024
[FOR WITHDRAWAL OF AMOUNT]

4. Heard learned Advocate for the Appellant Insurance Company and learned Advocate for the Claimants – Respondent Nos.1 to 4.
5. There was an accident in between a Truck and Tavera. The deceased was occupant of Tavera. A Claim Petition was filed against the owner, driver, insurer of Tavera car and owner, driver, insurer of the

Truck. After evidence, the Claims Tribunal – Kolhapur held the owner, driver, insurer of the Truck responsible. Others are exonerated. This Appeal is by the Insurance Company of the Truck.

6. There are several deceased who were occupants of Tavera car. One of them is the predecessor in title of his Claimants. Various defences were taken. It includes, absence of driving license by driver of the Truck. One witness from RTO is examined. The Claims Tribunal has not believed his evidence. It is for the reason, he is not concerned with the Department who issued the driving license. There was a photo copy of driving license produced but was not considered in view of the objection.

7. There was a defence of absence of permit of the Truck. It was also rejected by the Claims Tribunal. (Para No.34). There was also a defence about absence of driving license by driver of Tavera car. The Tribunal has not gone into this issue because the Truck driver was held 100% responsible.

8. The Tribunal has referred about two more Petitions at Kolhapur. (Para No.33). The driver of the Truck was held responsible. Whereas, the Claim Petition filed at Islampur is also referred. Both the drivers were held responsible. (Para No.22). The plea taken by the Opponent

No.5 about use of Tavera car for hire was not accepted because no witness was examined. (Para No.41). Additionally, it is submitted by learned Advocate Ms.Shalini Shankar that the person who has lodged the FIR is not examined. (Para No.20).

9. Considering the findings as recorded above, 100% withdrawal cannot be granted. The Claimant No.1 is the mother whereas, Claimant Nos.2 and 3 are the daughters. Now, they have become major and Claimant No.4 is still minor son. There is a direction to deposit Rs.2,00,000/- (Rupees Two Lakh) in the name of Claimant No.1 and Rs.2,00,000/- (Rupees Two Lakh) each in the name of Petitioner Nos.2 to 4 till they attain majority.

10. I am inclined to allow 60% withdrawal. Hence, order:-

ORDER

- (i) Application is allowed.
- (ii) The Respondent Nos.1 to 3 are permitted to withdraw 60% of the amount along with accrued interest subject to an undertaking.
- (iii) The amount deposited in the name of Respondent No.4 be continued till he attains majority. Only the interest be paid to Respondent No.1.
- (iv) Apportionment be made as per the Award.

11. In view of that, **Application stands disposed of.**

[S. M. MODAK, J.]