IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 16079 OF 2023
IN
FIRST APPEAL NO. 799 OF 2023

Hema Shivaji Pawar and anr. … Applicants/ Claimants

In the matter of

Future Generally India Insurance Co. Ltd. ... Appellant

Versus

Hema Shivaji Pawar and Ors. ... Respondents

Mr. Yogesh Pande, Advocate for the Applicants/original claimants.
Mr. Rajesh Kanojia along with Ms.Deepika Prabhula i/b. Res Juris, Advocates for the Appellant.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th JANUARY, 2024.

P.C. :

1. Heard learned counsel for the applicants and learned counsel for appellant-Insurance Company.

2. Learned counsel for the applicants submitted that the deceased was the sole earning member of the applicants' family. The applicants have no source of income, they need the amount for daily expenses. Hence, requested to allow the application.

3. Learned counsel for appellant- Insurance Company strongly objected to allow the application on the ground that there was no insurance policy issued by the Insurance Company to the offending

vehicle but this fact is not considered by the Tribunal and has awarded compensation, which is not proper. The said fact is challenged by the Insurance Company before this Court by way of appeal. If withdrawal is allowed, it would be difficult for the appellant-Insurance Company to recover the amount from the claimants. Hence, requested to reject the application.

4. I have heard both learned counsel. The deceased was the sole earning member of the applicants' family. The applicants have no source of income, they need the amount for their daily expenses. The Tribunal has considered the submission of Insurance Company and after considering their submission, the Tribunal has passed the impugned order. The issue raised by the appellant-insurance company can be considered at the time of final hearing of the appeal. If undertaking is taken from the claimants at the time of withdrawal of the amount, it would suffice the purpose. Hence, I pass the following order :

O R D E R

1. The application is allowed.
2. The applicants are permitted to withdraw the 25% amount along with accrued interest therein, out of the deposited amount, on furnishing usual undertaking.

The application is disposed off.

(SHIVKUMAR DIGE, J.)