IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.9319 OF 2024
(FOR WITHDRAWAL)
IN
FIRST APPEAL NO. 617 of 2024
with
INTERIM APPLICATION NO.7809 OF 2024
(FOR STAY)

Kalyani Jagannath Kalokh and ors.	…	Applicants
In the matter of		
Reliance General Insurance Company Ltd.	…	Appellant
Versus		
Kalyani Jagannath Kalokh and ors.	….	Respondents

Mr. Nikhil Mehta i/b. KMC Legal Venture, Advocate for the Applicants/Respondent Nos.1 to 4.
Mr. Pandit Kasar, Advocate for the Appellant.

CORAM : ARUN R. PEDNEKER, J.

DATE : 24th JUNE, 2024.

P.C. :

1. Heard learned counsel appearing for the parties.

2. In the instance case, the appeal is filed by the Insurance Company on the ground of contributory negligence, so also, on the ground of quantum of compensation. With the assistance of the counsel for the claimants and so also the counsel for the insurance company, I have perused the documents produced on record, so also tendered across the Bar.

3. As regards contributory negligence is concerned, prima facie it can be seen from the judgment of the Tribunal so also from the record that the chargesheet is filed against the driver of the dumper and the evidence indicate that the dumper had hit the motorcycle from behind. The only contention raised by the insurance company is that the pillion rider is not examined to prove the negligence. But that alone prima facie will not negativate the contention that the dumper was negligent or that the motorcycle rider was partially negligent for the accident.

4. As regards the second contention of the Insurance Company that excess amount is granted as compensation, from the perusal of the record, it can be seen that the deceased was earning at the relevant time an amount of Rs.13,44,975/- annually, from which, there is income tax deduction of Rs.1,57,367/- approximately and further deduction of personal expenses of nearly about Rs.3,00,000/-. Still the deceased would be earning prima facie at the relevant time Rs.900000/- per annum. The Tribunal has considered the income of Rs.66,000/- per month and has accordingly computed the compensation. As such, prima facie I do not see that there is enhanced compensation granted.

5. In view of the same, I pass the following order :

1. An amount of Rs.15,00,000/- each as directed by the Tribunal to be invested in favour of applicant Nos.2

and 3 (minor children) should be invested till applicant Nos.2 and 3 attain majority.

2. Applicant No.1 (the widow) is permitted to withdraw 80% of the amount towards her share along with accrued interest thereon.

3. Applicant No.4 (the mother of the deceased) is permitted to withdraw Rs.8,00,000/- (Rupees Eight Lakh Only) along with accrued interest thereon from her share.

4. The withdrawal is subject to undertaking to the satisfaction of the Presiding Officer of the Tribunal to be filed individually by the mother and widow.

The Interim Application No.9319 of 2021 is accordingly disposed of.

6. The First Appeal is admitted.

7. On admission, Mr. Mehta, learned counsel waives service of notice for respondent Nos.1 to 4.

8. The stay granted earlier stands confirmed till the final disposal of the appeal.

9. Interim Application No.7809 of 2024 stands disposed of.

(ARUN R. PEDNEKER, J.)