

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1306 OF 2023

WITH

INTERIM APPLICATION NO. 9876 OF 2024

The Oriental Insurance Co. Ltd.

... Appellants /
Applicants

Versus

Prerana @ Vidhi Vishal Shirodkar and Ors.

... Respondents

WITH

INTERIM APPLICATION NO. 7986 OF 2024

IN

FIRST APPEAL NO. 1306 OF 2023

Prerana @ Vidhi Vishal Shirodkar and Ors.

... Applicants

In the matter of

... Appellants

Prerana @ Vidhi Vishal Shirodkar and Ors.

Versus

The Oriental Insurance Co. Ltd.

... Respondents

.....

Mr. Nikhil N. Pawar, Advocate for the Appellant.

Mr. T. J. Mendon, Advocate for Respondent Nos. 1 and 2.

CORAM : ARUN R. PEDNEKER, J.

DATED : 1st JULY, 2024.

P.C. :

- Interim Application No. 9876 of 2024 for bringing legal heirs of respondent No.3 is allowed. Necessary amendment be carried out in the appeal memo within two weeks.

2. The learned counsel for Insurance Company submits that the appeal is primarily filed on the ground that the vehicle was not insured and that there was non joinder of the necessary party i.e. owner cum driver of the motorcycle. The learned counsel also submits that the income of the deceased is considered on higher side. As regards first two grounds are concerned, this would be specifically covered within the concept of pay and recover. As regards the ground that the income is considered on higher side is concerned, the salary certificate is on record and the employer is examined. The deceased was working as a salesman in Hyundai workshop at Neelam Automobiles Pvt. Ltd. and his last drawn salary was Rs.17,500/-. He was produced authority letter given by the company. The evidence was led by the employer's representative. He has produced letter of authority of the company. The net income is taken as Rs.15,329/- p.m. Necessary deductions are also made. Thus, I do not prima facie see that the income is considered on higher side.

3. In view of the same, both the claimants are permitted to equally withdraw 75% of the amount as directed by the Tribunal along with accrued interest thereon to the extent of their share subject to filing undertaking to the satisfaction of the Presiding Officer of the Tribunal.

4. The Interim Application No. 7986 of 2024 for withdrawal of

amount is disposed of with the above directions. Since the amount is deposited, there shall be stay to the execution proceedings.

5. The appeal is admitted.

6. Learned counsel for the appellant submits that the original claimant No.3 i.e. the mother has expired and the legal heirs have not filed application for withdrawal of the amount and that they would file separate application to the extent of the share of the deceased claimant No.3.

7. Liberty reserved.

8. Call R & P.

(ARUN R. PEDNEKER, J.)

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