IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 10843 OF 2024
IN
FIRST APPEAL NO. 1729 OF 2024

Sunita Sunil Bhoir and Ors. … Applicants
Versus
Oriental Insurance Company Ltd. ... Respondent

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Smt. Rina Kundu, Advocate for Applicants.
Mr. Rajesh Kanojia i/b. Res Juris, Advocate for the Respondent.

CORAM : SHIVKUMAR DIGE, J.
DATED : 17th DECEMBER, 2024.

P.C. :

1. By this application, applicants are seeking withdrawal of amount.

2. It is the contention of learned counsel for the applicants that deceased was a sole earning member of applicants' family. Applicants were dependent on the income of deceased. Applicants need the amount for daily expenses. They have no source of income. Hence, requested to allow the application.

3. Learned counsel for the respondent-Corporation strongly objected to allow the application on the ground that deceased was gratuitous passenger to the offending vehicle. There was breach of terms and conditions of insurance policy. In spite of that the Tribunal has pass pay and recover order which is erroneous. Learned counsel further submitted that it is settled principle of law if there is gratuitous passenger the Tribunal should not have passed pay and recover order. Hence requested to reject the application.

4. I have heard both the learned counsel. The deceased was the sole earning member of the applicants' family. Applicants need the amount for their daily expenses. Applicants have no source of income. The grounds raised by the respondent Insurance Company can be considered at the time of final hearing of the appeal. Hence, Considering this fact, I pass following order :

ORDER

(i) The application is allowed.

(ii) The applicants are permitted to withdraw the 25% amount out of deposited amount along with accrued interest thereon on furnishing usual undertaking.

5. Interim application is disposed off.

(SHIVKUMAR DIGE, J.)