IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.518 OF 2025
IN
FIRST APPEAL NO.1882 OF 2024

Smt. Aasha Arvind Yadav and Anr. … Applicants.
In the matter between:
The Oriental Insurance Company Limited, Thane ... Appellant.
Versus
Smt. Aasha Arvind Yadav and Ors. ... Respondents.

Mr. Ranvir Shekavat i/by Raj Legal for the Applicants.
Mr. Sudhakar Pandaram for the Appellant.

Coram : Sharmila U. Deshmukh, J.
Date : February 24, 2025

P. C. :

1. Interim Application has been preferred seeking permission to withdraw the entire amount of Rs.17,13,651/- deposited by the Appellant before Commissioner for Employees Compensation in Application (ECA) No.212/B-64 of 2022 alongwith accrued interest.

2. The First Appeal arises out of the Judgment of the Trial Court dated 14th June, 2024 in an Application filed under Section 3 and 4 of the Employees Compensation Act, 1923 seeking compensation towards the death of the deceased which was allowed by the Trial Court.

3. The Appeal has been preferred by the Insurance-Company.

4. Learned counsel appearing for the Applicants submits that the Trial Court has granted compensation which has been duly deposited in the Trial Court in accordance with the statutory provisions. He would further submit that the Applicant No.2, who is the son of the deceased is presently studying in 12th standard and the deceased was sole bread-earner of the family and after his death, the Applicants are having financial difficulties. He would further submit that the Applicants are not having any source of income and therefore pending the hearing and final disposal of the Appeal, the Applicants be permitted to withdraw the entire amount.

5. *Per contra*, learned counsel appearing for the Respondent-Insurance Company would submit that the claim for compensation would not survive as there is breach of terms and conditions of the insurance policy as the deceased at the time of the accident was driving vehicle containing hazardous goods for which he did not have the necessary license as contemplated under the Motor Vehicles Act. He submits that in event, the Applicants are permitted to withdraw the entire amount, upon the Appeal succeeding, there will be difficulty in restitution.

6. I have considered the submissions and perused the record.

7. Before the Trial Court, the Insurance Company had raised the issue of breach of insurance policy on the ground that the deceased did not possess the license for transportation of hazardous waste and as such there is violation of Rule 9 of the Central Motor Vehicles Rules, 1993. The judgment of the Trial Court relies upon the decision of this Court in the case of ***Abdul Hamid Mohd. Hussain Khan and Anr. vs. Laxman Nagu Dhaigude and Anr., 2012, II CLR 226,*** which has held that the Insurance Company cannot take the defence available under the Motor Vehicles Act in the Application filed under the Employees Compensation Act. Based on the said decision, the Trial Court has held that the deceased not possessing the valid license does not absolve the Insurance Company from payment of compensation to the Applicant.

8. *Prima facie*, from the findings of the Trial Court, it appears that in view of the position of law settled by this Court, the defence under the Motor Vehicles Act is not available to the Insurance Company under the provisions of the Employees Compensation Act. As of today, there is decree which is in favour of the Applicants and the Appeal which is of the year 2024 may not be taken up for hearing immediately.

9. Considering the specific pleadings in the Application as regards the financial difficulties being faced by the Applicant, in the interest of justice, the Applicants can be permitted to withdraw 50% of the amount which is deposited before the Trial Court in Application (ECA) No.212/B-64 of 2022.

10. Application is partly allowed in the above terms.

[Sharmila U. Deshmukh, J.]