

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Civil Application No. 16052 of 2015

(In First Appeal No. 1810 of 2014)

Vishnu s/o. Baburao Munde,
since deceased through L.Rs.,
Shantabai w/o. Vishnu Munde
& 3 others.

.. Applicants
(Original claimants)

versus

New India Assurance Company Ltd.,
Aurangabad, through its Divisional
Manager, Adalat Road, Aurangabad,
& 4 others.

.. Non-applicants.

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*Mr. M.S. Karad, Advocate, holding for
Mr. S.S. Thombre, Advocate, for applicants.*

*Mr. S.G. Chapalgaonkar, Advocate, for
non-applicant no.1.*

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CORAM : A.M. BADAR, J.

DATE : 10TH DECEMBER 2015

PER COURT :

1. This is an application by legal representatives of deceased claimant in an injury claim. The application is for withdrawal of amount of compensation awarded by the learned Motor Accident Claims Tribunal, Ambajogai, in M.A.C.P. No. 48/2008.

2. Heard the learned Counsel appearing for both the parties and perused the impugned award.

3. Initially the claim was on account of injuries suffered by claimant Vishnu s/o. Baburao Munde in a vehicular accident. Perusal of judgment and award shows that both legs of the claimant were amputated because of accident arising out of use of motor vehicle. During pendency of the claim petition, claimant Vishnu died. Perusal of the impugned judgment and award shows that his death has no nexus with the accident in which he suffered injuries. The learned Tribunal has categorically gave a finding that Vishnu died because heart attack during pendency of the claim petition. The claim was prosecuted by his legal representatives.

4. As such it is clear that the death of Vishnu was not arising out of injuries suffered by him in the vehicular accident. In such situation, it was expected of the learned Tribunal to award pecuniary losses suffered by legal representatives of the deceased, particularly when the claim was under Section 163A of the Motor Vehicles Act, 1988, adhering to the structured formula. However, it is seen that the learned Tribunal assessed loss of dependency with a presumption that Vishnu died because of injuries suffered in the accident.

5. As such applicants / legal representatives of deceased Vishnu cannot be allowed to withdraw the entire amount deposited by the non-applicant / original appellant - Insurance Company. They can at the most be allowed to withdraw an amount of Rs. 15,000/- towards medical

expenses and Rs. 5,000/- towards pains and suffering as per structured formula in Schedule II to the Motor Vehicles Act, 1988.

6. As such applicants are permitted to withdraw Rs. 20,000/- out of the amount under the award deposited by the non-applicant / original appellant - Insurance Company. The Application is disposed of accordingly.

(A.M. BADAR)
JUDGE

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