

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

Civil Application No. 4980 of 2015
(In First Appeal No. 312 of 2012)

Parvez s/o. Kabiruddin Bandeali,
Age : 32 years,
Occupation : Education & Service,
R/o. Karimabad Co-op.
Housing Society, Nanded,
& others.

.. Applicants.

versus

Zilla Parishad, Parbhani,
Through its Chief Executive Officer,
& another.

.. Non-applicants.

.....

Mr. A.P. Bhakkad, Advocate, for applicants.

*Mrs. P.V. Diggikar, Advocate, for non-applicant
nos.1 and 2.*

.....

CORAM : A.M. BADAR, J.

DATE : 18TH DECEMBER 2015

PER COURT :

1. This is an application for withdrawal of amount under the award filed by original claimants.
2. Heard the learned Counsel appearing for applicants as well as

the learned Counsel appearing for non-applicants / appellants.

3. From perusal of the award, it is seen that claim under Section 166 of the Motor Vehicles Act, 1988, was allowed to the extent of Rs. 20,80,000/-. It was on account of death of Kabiruddin, District Health Officer working with Zilla Parishad. He died in the accident because of rash and negligent driving of the vehicle owned by Zilla Parishad which is the appellant before this Court.

4. The application is objected to by the learned Counsel appearing for non-applicants / appellants - Zilla Parishad by pointing out the order dated 2nd April 2012 passed on Civil Application No. 2302 of 2012. The learned Counsel appearing for non-applicants - Zilla Parishad vehemently argued that the deceased was misusing the official jeep. He had taken out the jeep from his territorial jurisdiction for his private purpose. In that process, the jeep met with accident. As the fault lies on the part of the deceased in taking away official jeep for his own private purpose and that too outside the jurisdiction, the learned Tribunal ought to have dismissed his claim. The learned Counsel appearing for non-applicants / Zilla Parishad further argued that after demise of Kabiruddin, claimants are receiving amount of pension and retiral dues are already paid to them. Hence in submission of the learned Counsel appearing for non-applicants / Zilla Parishad, no amount can be allowed to be disbursed.

5. In the case of *Vimal Kanwar & others Vs. Kishore Dan & others*, reported in *2013 ACJ 1441*, the Hon'ble Apex Court has held that receipt of pension, provident fund, other retiral dues as well as

compassionate appointment plays no role in assessing compensation in death claim. So far as fault on the part of the deceased in taking away the official jeep for private use is concerned, the remedy lies elsewhere. Hence applicants who are victims of the vehicular accident cannot be prevented from receiving compensation on these counts. Considering the nature of award, they are entitled for withdrawal of at least 50 % amount under the award.

6. Hence, I pass the following order :-

The Application is partly allowed. Applicants / original claimants are permitted to withdraw half of the amount of compensation awarded by the learned Tribunal, on furnishing solvent surety. The apportionment and disbursement should be in terms of award of the learned Tribunal.

7. The Civil Application stands disposed of accordingly.

(A.M. BADAR)
JUDGE

.....