

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

927. CA/6387/2015 In FA/1565/2015 WITH CA/2342/2015 In
FA/1565/2015

BHASKAR LAXMAN JADHAV AND ANOTHER
V/S
MANAGER, UNITED INDIA INSURANCE COMPANY LTD. AND ORS.

Mr. Mohit R. Deshmukh, Advocate for applicants.

Mr. S.S. Rathi, Advocate for respondent No.1.

CORAM : T.V. NALAWADE, J.
DATED : 8th July, 2015.

ORDER :

1. The application is filed for permission to withdraw the amount of compensation deposited with the Commissioner. The learned counsel for Insurance Company has strong objection to it. He submitted that there was cover to the risk of 1 + 1 persons and it means that the risk of one driver and one cleaner was covered. The learned counsel for Insurance Company placed reliance on the cases reported as **AIR 2013 SUPREME COURT 1064 [Manager, National Insurance Co. Ltd. Vs. Saju P. Paul and Anr.]** and **AIR 2003 SUPREME COURT 2877 [Ramashray Singh Vs. New India Assurance Co. Ltd. and ors.]**.

2. It appears that the Insurance Company has not given

evidence in rebuttal when it is specific case of original claimant that he was in the truck to assist the driver as a cleaner of the truck. The police papers show that there were two persons in the truck at the time of accident and one person, who was described as cleaner, was seriously injured and this person was shifted to hospital, but he died due to injuries. In view of the specific provisions of Workmen's Compensation Act and in view of the nature of proceeding, and as there is nothing in rebuttal, this Court holds that permission needs to be given for withdrawal of amount subject to some conditions.

3. In the result, the application is allowed. The amount deposited is to be disbursed as per the order made by the Commissioner subject to giving of undertaking by applicant Nos. 1 and 2 that in case, the matter is decided against them, they will deposit the amount before the Commissioner with interest at the rate of 12% p.a. The application is disposed of.

4. If the Insurance Company has not deposited the interest amount, that amount is to be deposited otherwise the stay shall stand vacated.

5. Heard the learned counsel for appellant in appeal. In

view of the reasoning given and the challenge to the reasoning, the appeal is **admitted** by formulating following substantial questions of law.

- (i) Whether the commissioner has committed error in allowing the compensation by holding that the risk to the deceased was covered by policy.

[T.V. NALAWADE, J.]

ssc/