

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

Civil Application No. 11392 of 2015

(In First Appeal No. 1474 of 2015)

Nilofar Jabeen d/o. Gaffar Khan,
Age : 23 years,
Occupation : Student,
R/o. Subhash Peth,
House No. 816,
Chhavni, Aurangabad,
& 2 others.

.. Applicants
(Original claimants)

versus

The New India Assurance Co. Ltd.,
Through its Divisional Manager,
Adalat Road, Aurangabad,
& 2 others.

.. Non-applicants
(Original respondents)

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Mr. P.C. Mayure, Advocate, for applicants.

*Mr. Dhananjay P. Deshpande, Advocate, for
non-applicant no.1.*

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CORAM : A.M. BADAR, J.

DATE : 18TH DECEMBER 2015

PER COURT :

1. This is an application for permission to withdraw the amount of compensation deposited in this Court by non-applicant no.1 - Insurance Company.

2. Heard Shri Mayure, the learned Counsel appearing for applicants / original claimants and Shri Deshpande, the learned Counsel appearing for non-applicant no.1. Perused the impugned judgment and award.

3. Shri Mayure, the learned Counsel appearing for applicants submitted that because of death of Raziya, mother of applicants - claimants in the vehicular accident, applicants have become virtually orphan and they no means of livelihood and hence according to him, compensation assessed as per award of the Tribunal needs to be disbursed in their favour.

4. As against this, Shri Deshpande, the learned Counsel appearing for non-applicant no.1 - Insurance Company, submits that involvement of the auto-rickshaw in the accident in question itself is in doubt. Shri Deshpande, the learned Counsel, submitted that the FIR of the accident came to be lodged after six days. By pointing out address of the owner of the auto-rickshaw as well as address of claimants in the claim petition, Shri Deshpande tried to urge that the claim itself is collusive because both these parties are resident of the same locality.

5. After adjudication of the claim on merit, the learned Tribunal came to the conclusion that the accident happened because of rash and negligent driving of the auto-rickshaw owned by original respondent no.1 which was insured with non-applicant no.1 - Insurance Company. In such situation, at least half of the amount of compensation awarded by the

learned Tribunal needs to be disbursed in favour of applicants / original claimants. Interest of non-applicant no.1 - Insurance Company can be served by directing applicants to furnish surety / security.

6. Hence the Application is partly allowed.

Applicants / original claimants are permitted to withdraw half of the amount under the award on furnishing solvent surety / security.

7. The Civil Application is accordingly disposed of.

(A.M. BADAR)
JUDGE

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