

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

Civil Application No. 13552 of 2015
(In First Appeal Stamp No. 28353 / 2013)

Benjamin John Gardi
& another.

.. Applicants
(Original claimants)

versus

The New India Assurance Company Ltd.

.. Non-applicant
(Original appellant)

.....

Mr. Shrikant S. Patil, Advocate, for applicants.

Mr. A.B. Kadethankar, Advocate, for the non-applicant.

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CORAM : A.M. BADAR, J.

DATE : 23RD NOVEMBER 2015

PER COURT :

1. Heard the learned Counsel for applicants as well as the learned Counsel appearing for non-applicant - Insurance Company.
2. Applicants are dependent legal heirs of deceased. They are seeking for withdrawal of compensation awarded to them by the learned Tribunal on account of death of Benhar Gardi. The learned Tribunal has considered and concluded that at the time of accident in question, deceased was travelling in the trolley attached to the tractor and contract of

insurance does not mention that the tractor was insured only for the purpose of agriculture.

3. In this view of the matter, the Application is partly allowed. Applicants are permitted to withdraw fifty percent amount of compensation on furnishing an undertaking that in the event of allowing the appeal with a finding that the applicants should refund the amount of compensation, they shall re-deposit the amount of compensation within one month.

4. The amount so allowed to be withdrawn shall be withdrawn in the mode, manner and proportion of its disbursement as per the award.

5. The amount allowed to be withdrawn be transmitted to Motor Accident Claims Tribunal, Shahada, for disbursement as well as for furnishing the undertaking. Upon furnishing undertaking, the learned Member of the Motor Accident Claims Tribunal is requested to transmit that undertaking to this Court for making it part of record of this appeal.

6. The Civil Application is disposed of in the above terms.

(A.M. BADAR)
JUDGE

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