

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

**1049 CIVIL APPLICATION NO. 13365 OF 2015
IN FA/14/2013**

MEENA BALKRUSHNA KHANDAGAL AND ORS

VERSUS

**UNITED INDIA INSURANCE CO.LTD THR DIVISIONAL MANAGERAND
OTHERS**

...

Advocate for Applicants : Mr. Shelke Shivaji T.
Advocate for Respondent No.1 : Mr. A. B.Gatne,
Advocate for Respondent Mr. 3 : Mr. P. B. Shirsath

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CORAM : S. V. GANGAPURWALA, J.

DATE : 16th October, 2015

PER COURT :

1. This is an application for modification of the order dated 6th December, 2013.

2. According to Mr. Shelke, the learned counsel for the applicants, liability of the insurance company cannot be disputed as the insurance company is liable to compensate the third party. The order dated 6th December, 2013 permits withdrawal of amount of 50% on furnishing solvent security/surety. It is not possible for the applicants to give the same. As such, the said order be modified and the applicants be permitted to withdraw the said amount on submitting undertaking.

3. Mr.Gatne, the learned counsel for the insurance company opposes the said request. The said order is passed after hearing the parties. There are no change in circumstances to re consider the said order. The order of pay and recover has been passed, which is assailed by the insurance company on the ground that marriage party was travelling in a goods vehicle and pay and recover order could not have been passed. The insurance company ought to have been exonerated.

4. Considering the above and the fact that there is no change in circumstance, the order needs no modification. Civil application is rejected.

5. Fix the appeal for final hearing in the week commencing from 4th January, 2016.

(S. V. GANGAPURWALA, J.)

JPC