

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

Civil Application No. 13965 of 2015
(In First Appeal No. 2140 of 2015)

Smt. Pratibha Prakash Patil,
Age : 37 years,
Occupation : Household work,
R/o. Kundane,
Taluka & District : Dhule,
& 4 others.

.. Applicants.

versus

Bajaj Allianz General Insurance Co. Ltd.,
through its Manager,
GE Plaza, Airport Road,
Yeravda, Pune,
& 2 others.

.. Non-applicants.

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Mrs. Sabahat T. Kazi, Advocate, for applicants.

Mr. S.G. Chapalgaonkar, Advocate, for non-applicant no.1.

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CORAM : A.M. BADAR, J.

DATE : 15TH DECEMBER 2015

PER COURT :

1. This is an application for withdrawal of amount by respondents - original claimants. By this application, applicants are seeking withdrawal of the entire amount deposited by the Insurance Company.

2. The claim for compensation was on account of death of husband of claimant no.1 and father of rest of the claimants. The loss of dependency was estimated at Rs. 5,000/- per month and accordingly compensation is calculated. The claimants are seeking withdrawal of entire amount of compensation. However, that is not permissible in view of the judgment of the Hon'ble Apex Court in the case of ***General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Susamma Thomas (Mrs.) and others***, reported in (1994) 2 SCC 176.

3. Shri Chapalgaonkar, the learned Counsel appearing for non-applicant no.1 - Insurance Company, opposes the application by stating that the Insurance Company is not liable to pay the amount of compensation as at the time of accident in question, the truck was not having permit to ply in Maharashtra State where the accident had happened.

4. The accident has occurred because of dash of the truck to the deceased who was travelling on the bicycle. As such he was third party to the contract of insurance. Therefore there is no hurdle in releasing some of the amount in favour of the claimants on obtaining their personal undertaking. It is seen that except claimant no.1 Pratibha, rest of the claimants are minors. The learned Tribunal has apportioned the amount of compensation *inter se* amongst them. 40 % amount of compensation is earmarked for original claimant no.1 Pratibha.

5. Hence the Application is allowed to the extent of permitting

claimant no.1 Pratibha to withdraw an amount of Rs. 2,00,000/- from the compensation falling in her share. The said amount be paid to her by account payee cross cheque, on furnishing personal undertaking by claimant no.1 that in the event of allowing the appeal, she shall re-deposit the amount so withdrawn within a period of one month.

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

(A.M. BADAR)
JUDGE

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