IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Civil Application No. 1892 of 2016
In
First Appeal No.3492 of 2015

Nasreen D/o. Shaikh Babu
And Others. .. **Applicants.**

Versus

TATA AIG General Insurance Co.
Aurangabad & Another. .. **Respondents.**

Shri. Mohit R. Deshmukh, Advocate, for applicants.
Shri. S.S. Patil, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 16th FEBRUARY 2016

ORDER:

1) The application is filed by original claimants for permission to withdraw the compensation amount deposited by the insurance company.

2) Learned counsel for the insurance company has strong objection to the application. Learned counsel submits that the defence of breach of conditions of policy was taken and one officer is examined to prove that the rider of the vehicle was not holding valid and effective driving licence at the relevant time. He submits that one

employee of the R.T.O. Office was examined to show that the rider of the motor cycle had obtained licence subsequent to the date of accident and this circumstance is not considered by the Tribunal. No order of pay and recover is made. Learned counsel placed reliance on a case reported as **2009 BCI 467 (Ningamma v. United India Insurance Co. Ltd.**) and he submitted that rider of the motor cycle was the husband of the pillion rider and rider was the registered owner and so in the present case it is as good as claim of the registered owner though the issues of the deceased had filed the claim.

3) In view of the aforesaid nature of defence this Court holds that permission needs to be given to the claimants to withdraw the amount subject to giving undertaking.

4) In the result, the application is allowed. Disbursement of the amount is to be made as per the award prepared by the Tribunal subject to giving of undertaking by the applicants.

Sd/-
(T.V. NALAWADE, J.)

rsl