

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

69 CIVIL APPLICATION NO. 1890 OF 2016
IN FAST/26083/2015 WITH CA/11533/2015 IN
FAST/26083/2015 WITH CA/11534/2015 IN
FAST/26083/2015

HIRABAI DHONDIRAM KHALEKAR AND OTHERS
VERSUS
THE NEW INDIA ASSURANCE CO. LTD. AND ANR

Shri. N.C. Garud, Advocate, for applicant.

Shri. D.P. Deshpande, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 29th FEBRUARY 2016

ORDER:

1) The application is filed by the original claimants for permission to withdraw the amount deposited by the insurance company. Learned counsel for the insurance company has strong objection. He submitted that in view of the direction given by the Hon'ble Apex Court in the case reported as **AIR 2004 SC 1630 (Oriental Insurance Co. Ltd. v. Nanjappan)** procedure needs to be followed and steps need to be taken against the owner only and after that application can be considered.

2) The Tribunal has also fixed the liability on the owner by holding that there is breach of conditions of policy. Direction is given to proceed against the owner. In view of these circumstances and as it will be difficult for the claimants to get the fruits of the decision this Court holds that permission needs to be granted to the claimants to withdraw the amount subject to giving of the undertaking. So the application is allowed. Claimants are allowed to withdraw the amount with interest subject to giving undertaking.

3) Stay application is disposed of.

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

rs1