

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

34 CIVIL APPLICATION NO. 14076 OF 2015
IN FA/2335/2015 WITH CA/11480/2015 IN FA/2335/2015

MOHINI SANTOSH @ KRUSHNA SHELAR AND OTHERS
VERSUS
NATIONAL INSURANCE CO. LTD. THR ITS DIV.MANAGER

...
Advocate for Applicants : Kotkar Sanjay D.
Advocate for Respondent No 1 : S P Chapalgaonkar
...

CORAM : T.V. NALAWADE, J.
DATED : 19th January, 2016.

PER COURT :

1. Heard both the sides. The learned counsel for Insurance Company has produced the copy of order made in present Civil Application No. 14076/2015 dated 23.10.2015 by the other Hon'ble Judge of this Court.

2. This Court has gone through the reasoning given by the Tribunal. The Insurance Company has challenged the award as the Tribunal has not taken in to consideration the circumstance that the motorcycle of the deceased had given dash to a stationary vehicle from the backside of the stationary vehicle. The learned counsel for Insurance Company submitted that it can be easily presumed that the deceased was also negligent and his negligence was more than 50%.

3. In view of the possibility of accepting the aforesaid contentions of the Insurance Company, this Court holds that 50% of the compensation can be allowed to be disbursed. However, share of the minors cannot be disbursed. It appears that the Tribunal has awarded 50% compensation to the minors, who are two in numbers and remaining 50% is given to widow and mother of deceased. Thus, if the claimants are allowed to withdraw remaining 50% amount and Insurance Company succeeds, then there will be nothing left for minors. In view of these circumstances, this Court holds that it is not possible to grant permission to withdraw more amount as already 50% of the share of the major claimants is allowed to be withdrawn. The application is disposed of.

4. List the matter for final hearing at admission stage on 25.2.2016. Call record and proceeding.

[T.V. NALAWADE, J.]

SSC/