

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

CIVIL APPLICATION NO. 9733 OF 2016

IN

FA/3199/2015

PARVATIBAI RAMCHANDRA DESHMUKH AND OTHERS
VERSUS
THE NEW INDIA ASSURANCE CO. LTD. AND ORS

...

Advocate for Applicants : Mayure Pramod C
V.N. Upadhye For R/1

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CORAM : K.L.WADANE, J.

DATED : 5th October, 2017

O R D E R :

Heard learned counsel for the applicants.

2. This is an application for withdrawal of amount of compensation deposited by the Insurance Company in this Court.

3. Learned counsel appearing for the insurance company opposes the application on two grounds i.e. involvement of the vehicle in the accident and secondly on the ground of quantum.

4. I have examined the record and proceedings, particularly from the contents of the first information report, and the report submitted by the concerned Medical Officer dated 9.12.2011

to the police station in charge of Tophkhana police station coupled with the written statements of driver as well as owner of the vehicle. From the same, it appears that deceased Ramchandra was admitted in the hospital on 3.12.2011 and during his medical treatment he succumbed to the injuries on 9.12.2011. After the death of deceased, the Medical Officer reported the matter to the concerned police station. Thereafter the police machinery was set in motion. During investigation, complaint was lodged by the son of the deceased namely Vijay. Further more, from the contents of the written statements of the driver and owner of the motor cycle, it appears that they had taken defence that deceased himself was negligent while walking on the road. I am of the opinion that driver of the offending vehicle is the first witness to the incident and he has taken defence in his written statement that the accident occurred due to negligence of the deceased. Therefore, involvement of the vehicle is prima facie seen.

5. So far as second ground is concerned, care can be taken to keep certain amount in this Court till final disposal of the appeal.

6. In view of above, the applicants are allowed to withdraw 75 per cent of the amount of compensation deposited in this Court on the undertaking that in the event of adverse orders passed by this Court against the applicants they will re-deposit the said amount in this Court within a period of 12 weeks from the date of order. Rest of the amount be invested in fixed deposit initially for two years and be renewed from time to time as per the directions of this Court.

7. Civil Application is disposed of.

(K.L.WADANE, J.)

dbm