

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

49 CIVIL APPLICATION NO. 10911 OF 2017
IN FA/2327/2016

SHUBHANGI JAYSING NANGRE AND ORS
VERSUS
THE NEW INDIA INSURANCE CO. LTD. THR ITS BR.
MANAGER, AHMEDNAGAR AND ORS

...
Advocate for Applicants : Mr. N.C. Garud
AGP for Respondents: Mr. Mohit Deshmukh h/f Mr. S.G. Chapalgaonkar
....

WITH FA/2310/2016

CORAM : K.K. SONAWANE, J.

DATED : 13th NOVEMBER, 2017.

Order :-

1. Heard learned counsel for the applicants-original claimants and respondent-appellant-Insurance Company. None appear for rest of the respondents.

2. Perused the application. This is an application for withdrawal of the amount of compensation deposited in this Court, as per the Award passed by learned Tribunal. The matter in issue in present appeal is in regard to monetary liability on the ground of contributory negligence on the part of drivers of both the vehicles. The learned Tribunal after appreciation of evidence on record held all respondents No. 1 to 4 responsible for payment of compensation jointly and severally towards loss due to death of victim in the accident. Respondent-Oriental Insurance Company Ltd did not put into controversy findings of the learned Tribunal and accordingly for discharging its monetary liability deposited its share in the compensation amount before the learned Tribunal. However, appellant New India Insurance Company Ltd preferred first appeal and agitated findings of the monetary liability imposed on the appellant - Insurance Company for contributory

negligence. The matter pertains to the monetary liability amongst respondents. There is no dispute about quantum of compensation amount. In case, the appellant-Insurance Company is succeed in the appeal, the monetary liability would be imposed on the respondent - Oriental Insurance Company and its insured. In such circumstances, there is no impediment to allow the applicants, namely, widow, son and daughter of deceased Jaising in this case to withdraw the amount deposited in this Court. Definitely it would sub-serve the purpose to provide financial assistance to the original claimants. Moreover, appellant - Insurance Company has a remedy to recover the amount paid in this appeal from rest of respondents in case success in appeal. Therefore, application seeking permission for withdrawal of the amount by original claimants deserves to be allowed.

3. Accordingly, application stands allowed in terms of prayer clause "B". The applicants-original claimants are entitled to withdraw the same along with interest accrued thereon deposited in this Court by respondent-New India Insurance Company on furnishing undertaking for the satisfaction of Registrar (Judicial) of this Court to the effect that in case exigency arises following adverse situation in the present appeal, the applicants would refund the amount forthwith as per orders of this Court. Accordingly, civil application stands disposed of. The Registry to do the needful to facilitate for disbursement of the amount in favour of applicants as mentioned above.

[K. K. SONAWANE]
JUDGE

MTK