

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 728 OF 2016
WITH
CIVIL APPLICATION NO. 3130 OF 2017
IN
FIRST APPEAL NO. 728 OF 2016**

Smt.Jayashri Tanaji Khavare & Ors. ...Applicants

IN THE MATTER BETWEEN

National Insurance Co. Ltd. ...Appellant

Versus

Smt.Jayashri Tanaji Khavare & Ors. ...Respondents

.....

Mr.Ramdas A. Shelke for the Applicants.

Mr.Amol Gatne for the Original Appellant in FA.

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CORAM: MRS.MRIDULA BHATKAR, J.

DATED : OCTOBER 05 , 2017

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. This Application is filed by the applicants for withdrawal of amount deposited by the insurance company.
3. By the order dated 15.11.2014, the learned Member, Motor Accident Claims Tribunal, Kolhapur, in M.A.C.P. No. 680 of 2009 has granted compensation of Rs.4,33,000/- alongwith interest @ 7 % p.a. from the date of filing of application, till its realization.

4. Learned counsel for the applicants has submitted that the applicants are the wife and parents of the deceased. At the time of filing of the claim application, applicant no.1/widow of the deceased was 25 years old. He has further submitted that the applicants are from poor family and they are in need of money.

5. Learned counsel for the insurance company has submitted that while deciding the application under Section 163-A of the Motor Vehicle Act, the learned Member, Motor Accident Claims Tribunal, Kolhapur has not taken into account the defence of fault liability. He has further submitted that the insurance company has good case on merits. He has further submitted that the issue of liability under Section 163-A of the Motor Vehicle Act is pending before the Supreme Court. He has further submitted that if any amount is allowed to withdraw, then the applicants be asked to furnish the security.

6. The issue of fault liability or no fault liability under Section 163-A of the Motor Vehicle Act is at present pending before larger bench of the Supreme Court.

7. In view of the above submissions and the reasons mentioned in the application, the applicants are allowed to withdraw 50% of the amount of compensation, which is deposited by the insurance company as per their respective apportionment on an usual undertaking.

8. Parties to act upon an authenticated copy of this order.

(MRIDULA BHATKAR, J.)