

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

**905 CIVIL APPLICATION NO. 5535 OF 2018
IN
FIRST APPEAL NO.1332 OF 2017**

Rupesh S/o Ramesh Phulare
and antother

... Applicants.

Versus

Bajaj Allianz General Insurance
Company Ltd. and others

... Respondents.

....

Mr. Parikshit P. Dawalkar, Advocate for the Applicants.
Mr. S.G. Chaplagaonkar, Advocate for Respondent No.1.
Mr. S.P. Shah, Advocate for Respondent No.2.

....

CORAM : V.L. ACHLIYA, J.

DATED : 03rd MAY, 2018

PER COURT:-

1. The applicants-claimants have moved this application to withdraw the amount deposited by respondent No.1 pursuant to order dated 24.04.2017 by this Court (Coram : V.K. Jadhav, J.).

2. In nutshell, it is the contention of the learned counsel for the applicants that the applicant is a guardian appointed for minor-claimants have no source of income to meet the expenditure for their daily needs and education. In this background, learned counsel for the applicants requested to allow

the applicants to withdraw the entire amount.

3. On the other hand, the learned counsel for the respondent no.1 opposed the application with contention that there a good case to succeed in appeal by the respondent no.1-appellant. It is contended that involvement of vehicle is disputed. The F.I.R. was lodged eight months after the incident. There is no witness to incident and to prove involvement of vehicle. It is further contended that on the face of averments made in the application itself the deceased was traveling in the goods/ape rickshaw as a passenger and therefore, the respondent no.1, Insurance Company is not liable to pay the compensation. It is further contended that if applicants are permitted to withdraw the amount then, in that case it will be difficult to recover the same if appeal preferred by appellants is allowed.

4. On due consideration of the submission advanced, I am of the view the interest of the applicants and more particularly minors as well as respondent no.1 can be protected by passing the following order:

ORDER

I) The applicants are permitted to withdraw the amount of Rs.55,000/- lying deposited by the respondent no.1 on filing undertaking that in case the appeal is allowed, the applicants will re-deposit said amount if directed by appellate Court.

II) The Registrar (Judicial) is directed that after making the payment of 55,000/- to applicants, the remaining amount together with interest accrued be invested in fixed deposit initially for a period of one year with State Bank of India and same be continued to be reinvested till the amount allowed to be

withdrawn by the orders of the Court.

III) The interest accrued over the amount invested shall be paid to the applicants, after every three months.

IV) Applicants will be at liberty to move this Court for withdrawal of additional amount, in case any exigency arose.

V) The order of withdrawal of payment is subject to final order to be passed in appeal.

VI) The Civil Application is disposed of in above terms.

(V.L. ACHLIYA)
JUDGE

SPR