

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

**CIVIL APPLICTION NO. 2634 OF 2018
IN
FIRST APPEAL NO. 5056 OF 2017**

Ashabai Gowardhan Kadam and ors. ... Applicants

Versus

United India Insurance Company Ltd.
Through It's Branch Manager and others ... Respondents

...
Mr. P. C. Mayure, Advocate for applicants
Mr. S. G. Chapalgaonkar, Advocate for respondent No. 1

...
CORAM : SUNIL P. DESHMUKH, J.

DATED : 6th MARCH, 2018.

Order :-

1. Heard learned counsel for parties.
2. Learned counsel for applicants submits that earning member of the family has been lost in the accident, which had taken place in July, 2013. As a matter of fact, the claim had been made for 30,00,000/-, however, compensation has been awarded only to the extent of Rs.14,00,000/- and interest thereon. Counsel for applicant submits that the applicants are dependents of deceased and family is in dire need of money for their maintenance.
3. Mr. Chapalgaonkar, learned counsel appearing for appellant Insurance Company submits that perusal of award shows that non pecuniary excess compensation is granted under non pecuniary heads contrary to dictum by the Hon'ble Supreme Court in the case of *National Insurance Company Ltd. Vs. Pranay Sethi and others* reported in 2017(13) Scale 12.
4. He further submits that looking at the evidence as may be emerging on record, it is a case of contributory negligence. In the circumstances, entire liability of payment would not be borne by appellant Insurance Company. He, therefore, submits that application for withdrawal of entire amount would not be proper.

4. Having regard to aforesaid, particularly, accident occurred in July, 2013 and deceased has several dependents, it would be expedient to allow applicants to withdraw half of the amount from amount deposited in this court along with interest accrued thereon, on furnishing undertaking to the effect that the amount would be paid back / deposited by them in this court within a period of three months from the date of decision in the appeal, if it goes adverse to their interest. Rs.1,00,000/-, each in respect of minor two children, be invested in any nationalized bank earning interest and receipt of the same be furnished to the court.

5. As such, civil application is allowed. The applicants are permitted to withdraw half of the amount from the amount deposited in this court along with accrued interest thereon subject to filing undertaking as referred to above within a period of three weeks from today. So also, Rs.1,00,000/-, each in respect of minor two children, be invested in any nationalized bank earning interest.

6. The civil application stands granted in above terms and is disposed of.

[SUNIL P. DESHMUKH]
JUDGE

MTK