

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

958 CIVIL APPLICATION NO. 4351 OF 2018
IN
FIRST APPEAL NO. 4486 OF 2017

PUSHPA BABAN GAIKWAD & ORS.
VERSUS
BRANCH MANAGER, THE NEW INDIA
ASSURANCE CO. LTD. & ORS.

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Mr. P.S.Agrawal, Advocate for Applicants.
Mr. A.S.Osmanpurkar, Advocate for R – 1.

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CORAM : K.K.SONAWANE, J.
DATE : 28th JUNE, 2018

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ORAL ORDER :

1. Heard learned counsel for the applicant and learned counsel for Insurance Company. No one else appeared for rest of the respondents. Perused the application.

2. Mr. Osmanpurkar, learned counsel for Insurance Company raised objection that the issue of involvement of the vehicle in the accident itself is put in controversy in the Appeal. Therefore, the amount could not be allowed to be withdrawn by the claimants. In view of nature of the subject matter, there is no impediment to allow the claimants i.e. widow, children and mother of deceased Baban for withdrawal of at least 75% of the amount deposited in this Court. It would not cause any injustice but it would sub-serve the purpose in the interest of justice.

3. Hence, the application stands partly allowed. The applicants are hereby permitted to withdraw lump sum amount of Rs. 4 Lakhs [Rupees Four Lakhs] from the total compensation amount deposited in this Court

on behalf of the appellant – Insurance Company subject to condition that the applicants shall furnish undertaking that they would refund the amount so withdrawn in case any contingency arises in the Appeal. It is further stipulated that out of the total sum of Rs. 4 Lakhs [Rupees Four Lakhs] allowed to be withdrawn by the applicants, the amount of Rs. 25,000/- each be paid to the applicant No. 3 Sunita Raju Bhosale, Applicant No. 4 Usha Anil Ghorpade and applicant No. 5 Neeta Raju Khadke, the amount of Rs. 50,000/- [Rupees Fifty Thousand] each be paid to the applicant No. 2 Nilesh s/o Baban Gaikwad and applicant No. 6 Sulochana w/o Janardhan Gaikwad. Rest of the balance amount of Rs. 2,25,000/- [Rupees Two Lakhs Twenty Five Thousand] from the sum of Rs. 4 Lakhs [Rupees Four Lakhs] allowed to be withdrawn be disbursed in favour of applicant No. 1 Pushpa wd/o Baban Gaikwad. It is further directed that out of Rs. 2,25,000/- [Rupees Two Lakhs Twenty Five Thousand] allowed to be withdrawn by applicant No. 1 Pushpa wd/o Baban Gaikwad, the amount of Rs. 1.25 Lakhs [Rupees One Lakh Twenty Five Thousand] be invested in F.D.R. in any nationalized bank for a period of five years with liberty to avail benefit of interest accrued thereon as per rules. The remaining balance amount of Rs. 1 Lakh [Rupees One Lakh] be paid to the applicant No. 1 Pushpa wd/o Baban Gaikwad. The amount be disbursed in favour of all the applicants – claimants by issuing separate cheques in their favour.

4. Rest of the balance decretal amount remained deposited in this Court i.e. Rs. 1,55,458/- be invested in any nationalized bank for a period of two years or till decision of the Appeal whichever is earlier.

5. Accordingly, the application stands disposed of in above terms.

[K.K.SONAWANE]
JUDGE

KNP/C.A. 4351.2018 in F.A. 4486.2017