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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5154 OF 2018
IN
FIRST APPEAL STAMP NO.39331 OF 2017

Shaikh Sumayya Shaikh Sarfaraj and Others

APPLICANTS

VERSUS

Dyanoba Mukund Rakh and Another

RESPONDENTS

.....

Mr. Fayaz K. Patel, Advocate for the applicant
Mr. Mohit Deshmukh h/f Mr. S. G. Chapalgaonkar, for R-2

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 13th APRIL, 2018

ORDER :

1. Heard learned advocates for the parties.
2. Husband of applicant No.1, father of applicant No.2 and son of applicants No.3 and 4 died in an accident which had taken place in 2011. He was engaged in a business of sale and repair of mobile phones and had been earning handsome amount. With his sudden death, entire family has been exposed to harsh realities of life. Since his death, the earning by the family has been cut off. There is no other income source for the family worth the name. Lot of family responsibilities are to be borne by

the applicants. Expenses are to be incurred over day to day living as also education of applicant No.2. In addition, parents are also to be looked after. They require frequent medical attention and in the circumstances, the family is in need of compensation granted by the Tribunal.

3. Learned advocate for respondent No.2, the insurance company, however, submits that the amount of compensation granted is on the higher side and unsustainable on evidence adduced before the tribunal. He submits that it could not be said, evidence bears that the deceased had been earning handsomely doing business of mobile phone repairing and sale. He further submits that major negligence in the accident has largely been that of the deceased. He, therefore, submits that the insurance company may not be liable to bear the responsibility of payment of compensation to the extent which has been granted by the Tribunal. He, therefore, purports to oppose the request made under the application.

4. Although learned advocate for the insurance company purports to oppose withdrawal of the amount, yet it is discernible that family is in need of financial aid having been bereaved of bread earning family member. In the circumstances, while

tribunal, with reference to the evidence on record has considered the claimants to be entitled to the compensation granted, it would be expedient to allow the applicants to withdraw 50% of the amount deposited in this court on submission of undertaking to the effect that in case the appeal is decided against the interest of the applicants, they would deposit the amount so withdrawn within a period of three months from the date of such decision. The amount being so withdrawn shall be in the same proportion as per apportionment by the Tribunal in its award and shall also be invested and given treatment to in accordance with the operative part of the award.

5. Civil application disposed of.

[SUNIL P. DESHMUKH, J.]