

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

9 CIVIL APPLICATION NO. 8127 OF 2016
IN
FA/1940/2016

URMILA SATISH GAWALI AND ORS.
VERSUS
THE NEW INDIA ASSURANCE CO. LTD.
AND ANR.

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Mr. S.P.Salgar h/f Mr. N.V.Gaware,
Advocate for Applicants.
Mr. A.S.Osmanpurkar, Advocate for R – 1.
Mr. M.P.Shinde, Advocate for R – 2.

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CORAM : V.L.ACHLIYA, J.
DATE : 24th JULY, 2018

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ORAL ORDER :

1. The applicants are seeking permission to withdraw the amount of Rs. 40,58,791/- [Rupees Forty Lakhs Fifty Eight Thousand Seven Hundred Ninety One] deposited by respondent No. 1 – Insurance Company in terms of Award passed by the Tribunal.

2. Heard learned counsel for the applicants and respondent No. 1 – Insurance Company. Perused the Award passed by Trial Court.

3. Respondent No. 1 has opposed the application by filing affidavit-in-reply raising therein the following grounds.

[A] The alleged accident took place on 21/05/2009 and FIR was filed on the same day against unknown vehicle. Subsequently, on 30/10/2009 i.e. after a period of more than five months based on one supplementary statement number of vehicle

in question is involved in the accident, it ought to have been considered that the supplementary statement recorded by the police does not disclosed the source of information to involve the insured vehicle.

[B] The wife of deceased i.e. claimant deposed before the Court that one Gadade informed her about the vehicle number after one month of the accident however the claimants have not examined Mr. Gadade before the Court.

[C] The claimant No. 1 and Mr. Gadade has been declared as hostile witness in criminal trial, therefore, it is clear that the insured vehicle is not involved in the accident and, therefore, the appellant/insurance company can not be held liable for payment of compensation.

[D] That the Advocate for the claimants in the present case (before the tribunal) is Mr. P.J.Pulari and the same Advocate was represented the driver in Criminal Case No. 206/2010 for same accident. Therefore, it is clear case of non-involvement of vehicle and the insured vehicle was falsely involved in the accident.

[E] That it ought to have been considered that the truck driver acquitted in criminal trial i.e. Summary Case No. 206/2010 on the ground of non-involvement of insured vehicle.

[F] Ground raised in Appeal memo also kindly be considered while deciding the present applicant and only to avoid repetition, same is not mentioned in reply.

4. On due consideration of submissions advanced in the light of overall facts of the case, the reasons and findings recorded by trial Court and more particularly the fact that except the evidence adduced by the claimants, there is no other evidence; I am of the view that passing of following order would meet the ends of justice.

ORDER

[i] The applicants are permitted to withdraw the amount to the extent of Rs. 6 Lakhs [Rupees Six Lakhs]. The said amount be paid to applicant in equal proportion by transferring the amount to

the extent of their respective share in savings bank account on furnishing undertaking that the applicants shall refund the said amount in the event the Appeal is allowed or order is modified and they are required to repay the amount.

[ii] After making the payment of Rs. 6 Lakhs [Rupees Six Lakhs] to the applicants, the balance amount be invested in fixed deposit initially for a period of three weeks with State Bank of India, High Court branch, Aurangabad with standing instructions to renew the fixed deposit till further orders from this Court.

[iii] The amount of interest accrued over the amount invested in fixed deposit shall be paid to the applicants by transferring the amount of interest in the savings bank account of applicant No. 1 after every three months till further orders from this Court on written undertaking by applicant No. 1 that in case any order passed by this Court to refund the amount, she shall deposit the same within ten weeks from the date of such order.

5. The application disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

