

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

961 CIVIL APPLICATION NO. 7383 OF 2018
IN
FIRST APPEAL STAMP NO. 13449 OF 2018

ASHA AVINASH KHADSE & ORS.
VERSUS
NEW INDIA ASSURANCE CO. LTD. THR.
ITS MANAGER, AURANGABAD.

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Mr. P.C.Mayure, Advocate for Applicants.
Mr. M.R.Deshmukh, Advocate for R – 1.
Mr. R.V.Gore, Advocate for R – 4.

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

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ORAL ORDER :

1. Heard the learned counsel for the applicants and Insurance Company. No one else turn up on behalf of owner and driver of the offending vehicle. Perused the application.

2. It is submitted that the applicants are widow, daughter and mother of deceased Avinash Khadse, who met with the vehicular accident occurred on 26/08/2014. He was bread earner of the family and untimely death of the deceased caused great loss and hardship to the applicants. Therefore, the claimants preferred application u/s 166 of the Motor Vehicles Act. The Tribunal considered the entire facts and circumstances and allowed the petition. Pursuant to the Award passed by the Tribunal, the Insurance Company deposited the amount in this Court towards decretal amount. The applicants are seeking permission to withdraw the same.

3. Mr. M.R.Deshmukh, learned counsel for the Insurance Company opposed the contention put-forth on behalf of the applicants on the ground that the alleged accident caused solely due to the negligence on the part of the deceased. The Tribunal did not appreciate the facts in proper perspective and committed error while imposing monitory liability on the vehicle insured with the respondent – Insurance Company.

4. In view of nature of the subject matter and the objections raised on behalf of Insurance Company, I find that in stead of depriving the applicants from enjoying the fruits of the Award, it would be justifiable to allow the applicants to withdraw sum of Rs. 12 Lakhs from the amount deposited in this Court. It would definitely sub-serve the purpose in the interest of justice. Hence, the applications deserve to be allowed.

5. Accordingly, the applications stand allowed partly. The applicants – widow, mother and daughter of deceased Avinash Khadse are allowed to withdraw the lump sum amount of Rs. 12 Lakhs from the total amount deposited in this Court subject to condition that the applicants shall furnish undertaking that they would refund the said amount in case of any contingency arises in the Appeal. The applicant No. 1 Asha wd/o Avinash Khadse is hereby permitted to withdraw the amount on behalf of minor applicant No. 2 Shruti d/o Avinash Khadse being her natural guardian as mother. It is stipulated that out of Rs. 12 Lakhs allowed to be withdrawn by applicant No. 1 Asha, the amount of Rs. 7 Lakhs be invested in the name of minor applicant No. 2 Shruti in F.D.R. in any nationalized bank till she attain the age of majority.

6. Accordingly, the applications stand disposed of in above

terms. Rest of the balance decretal amount remained deposited in this Court on behalf of Insurance Company be invested in F.D.R. account in any nationalized bank for a period of two years or till the decision of Appeal, whichever is earlier. Registry to do the needful for disbursement of the amount amongst the applicants as mentioned above.

[K.K.SONAWANE]
JUDGE

KNP/C.A. 7383..2018 in F.A. St. 13449.2018