

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

**945 CIVIL APPLICATION NO. 9179 OF 2018
IN FA/1223/2018**

**GANESH RAMDIN CHAVAN AND ORS.
VERSUS
THE BRANCH MANAGER, NATIONAL INSURANCE CO. LTD., THR
ITS AUTHORIZED OFFICER, AURANGABAD**

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Advocate for Applicants: Mr. Vishnu B. Madan
Advocate for Respondents Nos. 1 : Mr. V.R. Mundada

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CORAM : V.L. ACHLIYA, J.

DATED : 20th JULY, 2018

PER COURT:-

1. The applicants have moved this application for withdrawal of amount deposited by the respondent / appellant -Insurance Company.

2. Pursuant to the award passed by the Tribunal, the respondent / appellant – Insurance Company has deposited the amount of Rs.6,65,000/- in this Court.

3. It is contended that the applicants are wholly dependent on the income of the deceased. The applicants no.1 and 2 are the old aged parents of the deceased and suffering from the various ailments. The applicants No.3 to 5 are taking education and to

meet their requirement, they are in urgent need of money.

4. Learned counsel for the respondent/appellant – Insurance Company opposed the application with the contention that there was a breach of the policy condition and the respondent/appellant -Insurance Company is not liable to pay compensation. It is contended that the driving license of the driver of the offending vehicle found to be fake. So also the deceased, who was driving the motorcycle himself responsible for the accident. It is contended that the respondent/appellant – Insurance Company is having good case to succeed in appeal and in case, the application is allowed, it will be difficult to recover the amount .

5. On due consideration of the submissions advanced in the light of overall facts of the case and the grounds raised in the appeal, I am of the view passing of following order would meet the ends of justice :-

ORDER

(A) Subject to final out come of the appeal, the applicants are permitted to withdraw the amount to the extent of Rs.3,00,000/- (Rupees Three Lakhs) out of the amount deposited by the respondent /appellant – Insurance Company. The amount be paid to the applicants No.1 and 2 in equal proportion on their furnishing undertaking to the satisfaction of the Registrar

(Judicial) to the effect that in the event the appeal is allowed and they are required to repay the amount, the applicants shall deposit the same in terms of the order to be passed in the appeal within 8 weeks from the date of such order.

(B) On furnishing the undertaking, the amount of Rs.3,00,000/- (Rupees Three Lakhs) be paid to the applicants Nos.1 and 2 in equal proportion by transferring the amount in their respective saving bank accounts (as per particulars of account to be furnished by the applicants) by way of electronic transfer through RTGS / NEFT or any other permissible mode of transfer of funds.

(C) After making the payment of Rs.3,00,000/- (Rupees Three Lakhs), the balance amount together with interest be invested in a fixed deposit with State Bank of India, High Court Branch, Aurangabad, initially for a period of three years subject to renewal till disposal of the appeal.

(D) The amount of interest accrued over the amount invested be paid to the applicant nos. 1 and 2 in equal proportion after every three months by transferring the amount in their respective savings bank accounts by electronic transfer / RTGS / NEFT. The order of payment of interest shall be subject to final order to be passed in the matter and the applicants shall liable to refund the same, if the appeal is allowed.

(E) The civil application is disposed of in above terms.

(V.L. ACHLIYA)
JUDGE