

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

921 CIVIL APPLICATION NO.11949 OF 2018
IN FA/146/2018

WITH
CA/349/2018 IN FA/146/2018

CHINTAMAN ARJUN BHIL (MORE) AND ORS
VERSUS
NEW INDIA INSURANCE CO. LTD.,

...

Advocate for Applicants : Mr. Patil Shrikant S.
Mr. MR Deshmukh, Adv. h/for Mr. S G Chapalgaonkar,
Adv. For Respondent.

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CORAM : P.R. BORA, J.
DATED : 28th SEPTEMBER, 2018.

PER COURT:-

1. Heard learned counsel for applicants and learned counsel for insurance company.
2. Learned counsel for the applicants has prayed for permitting the applicants to withdraw the entire amount as has been deposited by the insurance company.
3. The insurance company has filed the appeal challenging the Award passed by the Motor Accident Claims Tribunal, at Dhule (for short the Tribunal) in MACP No.868/2011. The learned counsel for the insurance company submitted that the claim petition was initially filed by husband of the deceased claiming compensation on account of

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accidental death of his wife. The children were not party-claimants in the original claim petition. The learned counsel further submitted that during pendency of the claim petition, original claimant died and the legal heirs were then taken on record and they have prosecuted the claim petition further. The learned counsel further submitted that the Tribunal has determined the amount of compensation as if the present claimants are the dependents on the income of the deceased and, therefore, taking their number in consideration, has deducted 1/4th of the amount for personal avocation etc. and as such, erroneously determined the amount of compensation. The learned counsel further submitted that had the claimant been alive and the claim petition been proceeded further, even then it could not have been said that he was fully dependent upon the income of his deceased wife. In the circumstances, according to the learned counsel, the considerations, as has been taken by the Tribunal considering the future prospects etc. while determining the amount of compensation, are unsustainable. The learned counsel, in the circumstances, has prayed for not allowing any

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withdrawal from the aforesaid amount and take the matter for final disposal as early as possible.

4. After having considered the submissions, as are advanced by the learned counsel appearing for the parties, I deem it appropriate to pass the following order, -

ORDER.

i. The application for withdrawal of the amount is partly allowed;

ii. The applicants are permitted to withdraw 30% out of the deposited amount, on submitting an undertaking to the satisfaction of the Registrar of this Court.

iii) Balance 70% amount be invested in Fixed Deposit Receipt in any nationalized Bank, initially for the period of two years and if so required, for the further period till disposal of the appeal.

iv) The amount so permitted to be withdrawn be transmitted to the Tribunal at Dhule so as to facilitate its withdrawal by the claimants;

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v) The undertaking to be submitted before the Tribunal and the Tribunal in turn shall forward it to this Court.

iii) The Civil Application for withdrawal of the amount stands disposed of.

. Re-issue notice in appeal to Respondent No.6, returnable after four weeks.

. Call R and P. Hearing of the appeal is expedited.

(P.R. BORA)
JUDGE

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