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

CIVIL APPLICATION NO. 3761 of 2018 IN FIRST APPEAL (STAMP) No. 13325 OF 2017

Kusumbai Borude @ Borhade **...APPLICANT**

VERSUS

New India Assurance Co. Ltd. and others **...RESPONDENTS**

Mr Ganesh S. Patil & Mrs. A.G. Patil, Advs. for applicant.
Mr S.R. Bodade, Advocate for respondent No.1

CORAM : SUNIL P. DESHMUKH, J.

DATE : 6th April 2018

ORDER :

Heard learned Counsel for the parties.

2. Application is filed for withdrawal of compensation amount granted to her under the judgment and award dated 13th July 2016, wherein sum of Rs. 5,00,000/- and interest thereon has been apportioned to her share. From the same, a sum of Rs. 2,50,000/- has been directed to be deposited in fixed deposit, in any nationalized bank of her choice, for a fixed period of three years and rest of the amount is directed to be paid to the applicant.

3. Learned Counsel for applicant submits that applicant is mother of deceased Vijay Vasantrao Borude, she was member of the family and she had been dependent on earning of the deceased. However, due to death of Vijay, she has lost support

of her maintenance. She is suffering due to her old age and as such, she is in dire need of amount for medical treatment and livelihood.

4. Learned Counsel for the respondent-insurer/appellant, Mr Bodade, however, submits that it is a case of contributory negligence and in the circumstances, Insurance Company may not be held liable to bear liability of payment of entire compensation amount granted under the award. He purports to resist withdrawal of amount by applicant.

5. Although, learned Counsel for appellant/Insurance Company has submitted so, it discernibly appears that there is no serious dispute about applicant requiring financial aid due to loss of earning source. It appears that the Tribunal has allowed applicant to withdraw sum of Rs. 2,50,000/- alongwith interest accrued thereon from the amount deposited by Insurance Company/appellant. Accident had taken place in 2013. In the circumstances, it would be expedient to allow applicant to withdraw a sum of Rs. 2,50,000/- alongwith interest accrued thereon from the amount deposited by Insurance Company/appellant.

6. Learned Counsel for applicant, on instructions, fairly submits that since applicant's claim for compensation to a large extent is accepted under the judgment and award passed on 13th

July 2016 in Motor Accident Claim Petition No. 15 of 2013 by the Motor Accident Claims Tribunal, Vaijapur, which is challenged in present First Appeal, filed at the instance of Insurance Company, Motor Accident Claim Petition No. 796 of 2013, which she had filed before the Motor Accident Claims Tribunal at Aurangabad, would not be prosecuted and same would not be pressed.

7. As such, applicant is allowed to withdraw a sum of Rs. 2,50,000/- (Rs. Two lacs fifty thousand only) alongwith interest accrued thereon, on furnishing undertaking by applicant that the amount so withdrawn would be paid back / re-deposited by her in this Court, within a period of three months from date of decision in the appeal, if the same goes against her. Undertaking to be filed within a period of three weeks from today.

8. Rest of the amount of Rs. 2,50,000/- (Rs. Two lacs fifty thousand only) alongwith accrued interest thereon of her share be invested in fixed deposit in a nationalized bank earning interest, as directed by the Tribunal.

(SUNIL P. DESHMUKH)
JUDGE.

Madkar