

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

**986 CIVIL APPLICATION NO.11567 OF 2018
IN FAST/22444/2018 WITH CA/9984/2018 IN
FAST/22444/2018 WITH CA/9985/2018 IN
FAST/22444/2018**

VISHWANATH VITHOBA SHINDE AND ANR .. Applicants
VERSUS
THE ORIENTAL INSURANCE CO. LTD.,
THR ITS BRANCH MANAGER, PARBHANI
AND ANR ..Respondents

...
Shri S.S. Rathi, Advocate for Applicants;
Shri U.S. Malte, Advocate for Respondent No.1.

...
CORAM : PR. BORA, J.
Dated: October 17, 2018

PER COURT :

1. Heard Shri Rathi the learned Counsel appearing for the applicants and Shri Malte the learned Counsel appearing for Respondent No.1 - Insurance Company.

2. The applicants have sought withdrawal of the entire amount deposited by the Insurance Company. The Insurance Company has resisted the request so made. Shri Malte the learned Counsel submitted that, involvement of the vehicle itself was disputed by the Insurance Company. The learned Counsel further submitted that, in the criminal case filed in relation to the accident in question also the Criminal Court has recorded a finding as about the non-involvement of the offending vehicle in occurrence of the alleged accident. The learned Counsel has

tendered across the bar the copy of the Judgment in S.C.C. No.189/2012. The learned Counsel also tendered across the bar the copy of the written-statement filed in the matter by the Insurance Company. The learned Counsel invited my attention to para 7 of the Judgment in S.C.C. No.189/2012 and submitted that, in such circumstances, no withdrawal can be permitted. Learned Counsel Shri Rathi for the applicants then tendered across the bar the copy of the spot panchanama prepared in the matter and pointed out that the offending vehicle was found on the spot of occurrence itself.

3. The learned Counsel for the Insurance Company has also disputed the quantum of compensation. It is contended that, income has not been proved by the applicants of the deceased. The learned Counsel submitted that, the income as held by the Tribunal to the tune of Rs.7500/- per month of the pharmacist in the year-2002 is on higher side.

4. On perusal of the Judgment passed in S.C.C. No.189/2012 and more particularly after having raised the contents of para 7, no such conclusion can be drawn as has been canvassed by Shri Malte. The Court has observed that the negligence of the driver has not been proved. However, it cannot be interpreted to mean that, the involvement of the vehicle has not been proved. On the contrary, the spot panchanama which has been produced by Shri Rathi in the matter clearly shows that, the offending vehicle was found on the spot of

occurrence. The spot panchanama was carried out on the same day immediately after the accident. *Prima facie*, I see no reason to disbelieve the said document.

5. Shri Malte learned Counsel appearing for the Insurance Company also submitted that, the Tribunal could not have held the income of the deceased more than Rs.3,000/- per month by applying the criteria of notional income. I am, however, not convinced with the submissions so made. Having regard to the qualification of the deceased, it appears to me that, the Tribunal has taken a reasonable approach.

6. In view of the submissions so made, the following order is passed.

ORDER

(i) The applicants are permitted to withdraw 50% of the deposited amount along with the interest accrued thereon on submitting an undertaking to the satisfaction of the Registrar of this Court.

(ii) Balance 50% amount along with interest accrued thereon be invested in Fixed Deposit Receipt in any Nationalized Bank till decision of the present appeal.

(iii) The amount permitted to be withdrawn be disbursed in equal proportion to the applicants.

(iv) Civil Application for withdrawal of amount stands disposed of.

7. Record & Proceedings be called.

8. Stand over to **28.11.2018**.

(PR. BORA, J.)

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