

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

**913 CIVIL APPLICATION NO.12234 OF 2018
IN FIRST APPEAL ST.NO.19231 OF 2018**

...
**PRAKASH S/O.SHESHRAO SARKATE & OTHERS
VERSUS
BABULAL S/O.MAGANLAL PATEL**

...
Mr.M.R.Deshmukh, Advocate for the applicants
Mr.S.S.Patil, Advocate for respondent no.3.

...
**CORAM : P.R.BORA, J.
DATE : 03.10.2018**

ORDER:

1. Heard the learned counsel appearing for the applicants and the learned counsel appearing for respondent no.3 – insurance company.

2. The applicants are seeking withdrawal of the entire amount deposited by respondent No.3 – Insurance Company.

3. The impugned award is challenged by respondent No.3 – Insurance Company on various grounds. It is the first contention

that there is absolutely no negligence on the part of the vehicle insured with the present Insurance Company, since it was a Stationery Truck. Second objection is about the quantum of the compensation and third is non-deduction of the income tax from the amount of compensation. The learned counsel, in the circumstances, has submitted for passing appropriate orders. According to the learned counsel, not more than 30% amount can be permitted to be withdrawn in view of the objections raised by the Insurance Company.

4. Shri Deshmukh, learned counsel appearing for the applicants submitted that from the evidence on record, it is quite evident that it is a case of composite negligence and in such circumstances, it was the choice of the claimants against whom to proceed, the learned counsel further submitted that the income tax issue will not arise as sufficient material was produced on

record, including form 16, taking care of the said aspect.

5. After having considered the submissions as above and on perusal of the impugned judgment, I deem it appropriate to pass the following orders:

ORDER

1. The applicants are permitted to withdraw Rs.40 lakh along with interest accrued thereon out of the deposited amount on submitting an undertaking to the satisfaction of the Registrar of this Court.

2. The balance amount along with interest accrued thereon be invested in the Fixed Deposit Receipt in any Nationalized Bank for the period till the disposal of the First Appeal.

3. The Civil Application stands disposed of.

[P . R . B O R A]
JUDGE