

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

912 CIVIL APPLICATION NO. 14412 OF 2017
IN FA/1798/2017

SAKARU DEVLARATHOD AND ORS
VERSUS
THE DIV. MANAGER, BAJAJ ALLIANZ GENERAL INSURANCE CO.LTD,
PUNE AND ORS

...
Advocate for Applicants : Mr. Govind G. Suryawanshi
Adv. for Respondents 1 to 3 : Mr. M.R. Deshmukh h/f
Mr. S.G. Chapalgaonkar
...

CORAM : K.K. SONAWANE, J.

DATED : 19th JUNE, 2018.

Order :-

1. Heard learned counsel for the applicants and respondent-Insurance Company.
2. By the present application, the applicants are seeking withdrawal of the compensation of amount deposited in this Court pursuant to award passed by the learned Tribunal.
3. Mr. Deshmukh, learned counsel for respondents No. 1 to 3 raised objection and submits that the mother of applicants-original claimants, namely Laxmibai Sakaru Rathod was gratuitous passenger travelling in the auto rickshaw, which was goods carrier, therefore, the Insurance Company is not responsible to indemnify loss caused to the owner of the vehicle. He submits that there is every hope of success in the appeal, therefore, the amount cannot be allowed to be withdrawn by the applicants.

4. Taking into consideration the arguments advanced on behalf of the learned counsel for respondent-Insurance Company, there is no doubt that the applicants-claimants sustained injuries during the course of accident of auto rickshaw. The learned Tribunal has appreciated the entire facts and circumstances and granted the compensation amount in favour of the applicants-claimants. There is no doubt that the applicants are entitled for compensation for the injuries caused to them in vehicular accident. In such circumstances, it would be justifiable to allow the applicants-claimants to withdraw at least 50% of the amount deposited in this Court on certain terms and conditions. In such circumstances, there is no impediment to allow the application partly.

5. Accordingly, the civil application is partly allowed. The applicants – claimants are hereby allowed to withdraw 50% of the amount deposited in this Court by the appellant-Insurance Company towards compensation subject to condition that the applicants-original claimants shall furnish undertaking to the effect that applicants-claimants would refund the amount so withdrawn in case any contingency arises in the appeal. Rest of the balance amount be invested in any Nationalized Bank for a period of two years or till final disposal of the appeal, whichever is earlier. Registry to take requisite steps for disbursement of the amount in favour of the applicants.

6. Accordingly, application stands allowed in above terms.

[K. K. SONAWANE]
JUDGE