

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

Civil Application No. 01353 of 2019
(In First Appeal No. 02880 of 2017)

District : Osmanabad

Chandrakala w/o. Sambhaji Karkar
& others.

.. Applicants
(Original
claimants)

versus

The New India Assurance Company Ltd.,
Through its Manager (Legal Hub) &
Authorized signatory,
Divisional Office at Adalat Road,
Aurangabad,
& another.

.. Non-applicants
(No.01 -
Original
appellant)

.....

Mr. Avishkar S. Shelke, Advocate, for the applicants.

*Mr. A.B. Kadethankar, Advocate, for non-applicant
no.01.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 21ST JANUARY 2019

ORAL ORDER :

01. Present application has been filed for bringing the legal representatives of deceased Gurudas - original respondent no.04, on record and for modification of judgment and order of this Court dated 19-10-2018.

02. The applicants are the original claimants in

M.A.C.P. No. 49 of 2011. Their application was partly allowed by learned Chairman of the Motor Accident Claims Tribunal, Osmanabad, on 06-12-2012. Respondents no.01 and 02 were directed to pay compensation of Rs. 7,50,000/-, excluding the amount under '*no fault liability*' together with the interest at the rate of 7.5 % per annum jointly severally. It was directed that the said amount should be distributed amongst the applicants in equal proportion.

03. The Insurance Company filed First Appeal No. 02880 of 2017 before this Court. After hearing both the parties, the said appeal was partly allowed on 19-10-2018. The award was modified to Rs. 6,87,050/- from Rs. 7,50,000/-. This Court also directed to give the remaining amount from the amount which was awarded from the deposited amount to the claimants equally. It is stated that, however, respondent no.04 expired on 02-11-2018 leaving behind applicants no.04(a) to 04(f) and applicant no.05 herein. Since respondent no.04 has expired after decision in the first appeal, necessary modification in the order to the extent of share of the deceased is required to be passed. It is also stated, that applicants no.04(a) to 04(f) are relinquishing their share of the amount of compensation in favour of applicant no.05. Affidavit to that effect is filed on record and, therefore, present application has been filed.

04. Heard learned Advocate Mr. A.S. Shelke appearing for the applicants. So also, heard learned Advocate Mr. A.B. Kadethankar appearing for non-applicant no.01.

05. Non-applicant no.01 (appellant in first appeal) has no objection for allowing the present application.

06. Perused the death certificate and the affidavits of applicants no.04(a) to 04(f). They are relinquishing their share from the amount of compensation which their father would have got in favour of applicant no.05.

07. Hence, the following order :-

Clause (5) in para 13 of the judgment and order passed in First Appeal No. 02880 of 2017 on 19-10-2018 is modified as follows :-

(5) Remaining amount from the deposited amount be given to original claimants no.01, 02, 03, 04 and 05 equally and the share, which original claimant no.04 would get, should be given to original claimant no.05. The excess amount deposited by the appellant - Company be refunded to the appellant - Company.

08. The Civil Application is disposed of in the
above terms.

(Smt. Vibha Kankanwadi)
JUDGE

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