

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

928 CIVIL APPLICATION NO.3930 OF 2019
IN FAST/2131/2017

SK. RASUL AHMED ABDUL RAHIM AND ORS
VERSUS
THE NEW INDIA INSURANCE COMPANY LTD. THR ITS BRANCH
MANAGER, AURANGABAD AND ORS

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Advocate for Applicant-Claimants : Mr. R.V. Gore h/f
Mr. A.R. Shaikh
Advocate for the Respondent No.1 : Mr. M. M. Ambhore

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CORAM : V.L. ACHLIYA, J.

DATED : 29th MARCH, 2019

PER COURT:-

1. Heard.
2. The applicants – claimants have moved this application for withdrawal of amount deposited by the appellant – insurance company.
3. The learned counsel for the appellant – insurance company opposed the withdrawal of the amount with contention that the appellant have good case to succeed in appeal. It is submitted that two vehicles are involved in the accident and the entire liability has been fixed against the one vehicle, which was insured with the appellant – insurance company. According to the

appellant – insurance company, the liability should have been apportioned in equal proportion between owner and insurer of both the vehicles.

4. On due consideration of the submissions advanced in the light of overall facts of the case and the grounds raised in the appeal, I am of the view that passing of following order would meet the ends of justice :-

O R D E R

[i] Subject to final out come of the appeal, the applicants are permitted to withdraw the amount to the extent of Rs.3,00,000/- (Rupees Three Lakhs) out of the amount deposited by the appellant – Insurance Company. The amount of Rs.3,00,000/- (Rupees Three Lakhs) be paid to applicant nos. 1 to 3 in equal proportion (i.e. Rs.1,00,000/- each) on furnishing usual undertaking to the satisfaction of Registrar (Judicial) incorporating therein the condition that in the event, the impugned judgment and award is set aside or modified, the applicants shall deposit the amount with this Court in terms of the order to be passed in appeal within eight weeks from the date of order.

[ii] After paying the amount of Rs.3,00,000/- (Rupees Three Lakhs) to applicant nos.1 to 3, the balance amount be invested in a fixed deposit, initially for a period of 28 months with standing

instructions to renew the same for further period till disposal of the appeal. The amount of accrued interest over the amount invested in fixed deposit be paid to applicant No.1 after the interval of every three months by transferring the amount in his saving account to be utilized for the maintenance of himself as well as co-applicants.

5. The Civil Application is disposed of in above terms.

(V.L. ACHLIYA)
JUDGE

SPR