

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

**15 CIVIL APPLICATION NO.4848 OF 2019
IN FAST/24114/2017**

**GEETA MAROTI DASARWAD AND ORS
VERSUS
THE NEW INDIA INSURANCE CO. LTD., THR ITS BRANCH MANAGER
AND ANR**

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Advocate for Applicants : Mr. Kulkarni Shrikant
Advocate for Respondent No. 1 : Mr. D. P. Deshpande

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CORAM : SUNIL K. KOTWAL,J.

DATE : 03rd June, 2019

PER COURT:

1. Heard learned counsel for claimants and insurer of offending vehicle. Learned counsel for insurance company submits that there was fundamental breach of condition of policy of the insurance, as it was used for hire basis. He submits that more passengers were traveling in the vehicle than permitted.

2. On the other hand, learned counsel for the claimants submits that mere carrying excess passengers than permitted limit, does not amount fundamental breach of condition of policy of the insurance.

3. I have gone through the judgment and award passed by the tribunal. At this premature stage, it is not desirable to express my

opinion on merits of the matter. However, out of the compensation amount, substantial amount is directed to be invested in fixed deposit in the name of minor claimant No.2 and 3. Thus, substantial compensation amount is already secured by the tribunal. In the circumstances, I have no hesitation to hold that at least claimant No.1 can be permitted to withdraw at least amount of Rs.10,00,000/- out of the deposited compensation amount. Therefore, permission is granted to the claimant No.1 Geeta Maroti Dasarwad to withdraw amount of Rs.10,00,000/- out of the deposited compensation amount in the Court, subject to filing of written undertaking to redeposit the same amount as and when directed by this Court. Undertaking be filed within a period of 4 weeks from the date of passing of this order. The balance amount shall be invested in fixed deposit in any nationalized bank till final hearing of the appeal. Civil Application is disposed of.

(SUNIL K. KOTWAL, J.)