

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

**966 CIVIL APPLICATION NO.6852 OF 2018
IN FAST/34588/2017**

**SUREKHA RAMRAO SHEWTE AND ORS
VERSUS
THE ORIENTAL INSURANCE COMPANY LTD. THR ITS BRANCH
OFFICER NANDED AND ANR**

...
Advocate for Applicants : Mr. Dhage Vaibhav B..
Advocate for Respondent No.1 : Mr. U. S. Malte
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 12th JULY 2019

ORDER :

. Present application has been filed for withdrawal of the amount. Respondent No.1 has deposited amount of Rs.15,76,830/-. The learned Advocate for respondent No.1 has strong objection for allowing the applicants to withdraw the amount on the ground that original respondent No.1, who is said to be the owner of the truck, so also the driver and owner i.e. original respondent No.1 appears to be involved in other two cases also and the theory was same. Initially, FIR was lodged regarding dash given by unknown vehicle and then the vehicle belonging to respondent No.1 is shown to have been involved. A specific contention to that effect was taken in the written statement by the Insurance Company and it is also submitted that specific issue was

not framed by the learned tribunal. He submits that if the amount is allowed to be withdrawn, then the very purpose of the appeal would be frustrated and it would be difficult for the Insurance Company to recover the said amount.

2. The first and the foremost fact is that as regards non framing of issue is concerned, the Insurance Company was at liberty to make a suitable application to frame proper issue before the tribunal itself. Secondly, as regards if at all, there is any conspiracy and a plot to involve the truck driven and owned by respondent No.1 is concerned, it would be a matter of evidence and it is not only then limited to that, but then for the Insurance Company it would be required to establish that the present applicants were also the part of the same, which appears to have not been done prima facie from the judgment and award of the tribunal in this case. At this stage, a competent Court has come to the conclusion and then passed an award against the respondents making the present respondent No.1 also liable jointly and severally to pay the compensation. Under such circumstance, case is made out for partial withdrawal of the amount.

3. Applicant No.1 is allowed to withdraw amount of Rs.2,50,000/- and applicant Nos.3 and 4 are allowed to withdraw

amount of Rs.1,00,000/- each subject to filing an undertaking that they would make the said amount good, if directed at the time of final disposal of the First Appeal.

4. Civil Application stands disposed of accordingly.

(Smt. Vibha Kankanwadi, J.)

Shubham/