IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

991 CIVIL APPLICATION NO.7857 OF 2019
IN FA/664/2019

SUSHILA PARMESHWAR MHASKE
VERSUS
UNITED INDIA INSURANCE CO. LTD., THR ITS DIV. M ANAGER, AURANGABAD AND ORS

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Advocate for Applicant : Mr. Patil Bipinchandra K & Mr. V M Kaghe
Advocate for Respondent No.1 : Mr. A. B. Gatne
Advocate for Respondent No.2 : Mr. Akhilesh Tripathi
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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 12th JULY 2019

ORDER :

. Present application has been filed for withdrawal of the amount. Amount of Rs.5,69,408/- has been deposited by present respondent No.1, pursuant to the order of this Court. The learned Advocate appearing for respondent No.1 strongly objects to the application on the ground that the Insurance Company had proved breach of terms of policy. In fact, the cover of risk of the deceased was not at all as per the policy as held by the learned tribunal. Though it was contended by the applicant that deceased was travelling from the jeep as cleaner, the owner has flatly denied the said capacity of the deceased. So also it has come on record that he was travelling from the roof and there were many passengers or occupants travelling from the said jeep at the relevant time and it was a goods carriage vehicle.

2. It is to be noted that at this stage, a competent Court has come to the conclusion that the Insurance Company has failed to prove that the owner of the jeep has committed breach of terms of policy and therefore, since the death has occurred due to the rashness and negligence of the driving of the pickup jeep, the applicant was held to be entitled to get compensation. Therefore, case is made out for partial withdrawal of the amount. Applicant is allowed to withdraw amount of Rs.1,50,000/- subject to giving an undertaking that he would make the said amount good, if directed at the time of final disposal of the appeal.

3. Civil Application stands disposed of accordingly.

(Smt. Vibha Kankanwadi, J.)

Shubham/