

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.6972 OF 2019
IN
FIRST APPEAL NO.3390 OF 2019
(FIRST APPEAL STAMP NO.8700 OF 2019)
(Manda Baban Pawar and another Vs. The New India
Assurance Company Ltd., through its Authorised
Signatory, Aurangabad and another)

Mr. Rajendra P. Phatke, Advocate for the applicants
Mr. M.M. Ambore, Advocate for respondent No.1

CORAM : MANGESH S. PATIL, J.

DATE : 27th NOVEMBER, 2019

PER COURT :

Heard both the sides.

2. The applicants, who are the original claimants are seeking withdrawal of the amount of compensation deposited by the appellant – Insurance Company pursuant to the impugned judgment and order.

3. The learned Advocate for the appellant – Insurance Company opposes the application on the ground that the Tribunal has not considered contribution though two vehicles were involved and

that the assessment of compensation is on higher side. He would further submit that though the deceased was unmarried, only 1/3rd has been deducted towards his personal expenses while assessing the compensation when it should have been $\frac{1}{2}$. The learned Advocate also submits that there was a breach of terms and conditions. He, therefore, submits that at the most, only 50% of the amount be allowed to be withdrawn.

4. Perused the impugned judgment. It does appear that the deceased was an unmarried person and still, only 1/3rd of his income has been deducted towards his personal expenses when it ought to have been $\frac{1}{2}$.

5. Taking into account the entire conspectus of the matter, in my considered view, this is a fit case where the applicants/claimants deserve to be paid 75% of the amount deposited. More so when the appellant - Insurance Company has not led any evidence to establish its case of contributory negligence.

6. The Civil Application is allowed. The applicants are allowed to withdraw 75% of the amount of compensation deposited in this Court by furnishing usual undertaking. However, the amount shall be disbursed

strictly in accordance with the apportionment made in the award.

[MANGESH S. PATIL]
JUDGE

npj/ca6972-2019