

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

**994 CIVIL APPLICATION NO.10422 OF 2019
IN RC/709/2019**

**HIRABAI ASHOK GAIKWAD AND ORS
VERSUS
THE BRANCH MANAGER, THE ORIENTAL INSURANCE CO. LTD, AND
ANR**

...
Advocate for Applicants : Mr. Karpe Rahul R.
Advocate for Respondent : Mr. Vinayak Narayan Upadhye

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 13th SEPTEMBER, 2019.

ORDER :

. Present application has been filed for withdrawal of the amount. Amount of Rs.25,13,419/- has been deposited by the appellant.

2. Learned Advocate appearing for the insurance company-appellant has strong objection for withdrawal of the amount on the ground that though the insurance company had proved that there was fundamental breach of terms of policy, the learned tribunal has saddled and made the insurance company liable to pay the compensation jointly and severally with the owner. He also submitted that the driver of the offending vehicle had not renewed his license between 14.09.2010 to 01.03.2011. It also

appears from the impugned judgment that the owner had contended that the driver had driving license of light motor vehicle and it was produced at Exhibit-31 and Exhibit-32 which showed that, that license had not expired. The fact that was considered by the tribunal was that the gross weight of the offending vehicle was 5300 Kgs and it could not have been termed as heavy motor vehicle and when the driving license for heavy motor vehicle was not renewed between the said period, it was considered that there was no question of fundamental breach of terms of policy.

3. Though the said point has been raised, yet there is no hurdle for withdrawal of the amount. Hence, applicant Nos. 5 and 6, who are the parents of the deceased are allowed to withdraw amount of Rs.2,00,000/-. Since applicant Nos. 2, 3 and 4 are minors, they are not allowed to withdraw any amount. Applicant No.1-widow who is supposed to run the house now is allowed to withdraw amount of Rs.7,00,000/- subject to filing an undertaking within a period of eight weeks that they would make the said amount good, if directed at the time of final disposal of the appeal.

4. Civil Application stands disposed of accordingly.

(SMT. VIBHA KANKANWADI, J.)

SCM