

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

**993 CIVIL APPLICATION NO.10421 OF 2019
IN FAST/27391/2018
WITH CA/10426/2019 IN FAST/27391/2018**

**POOJA BABURAO GAIKWAD AND ANR
VERSUS
BRANCH MANAGER, ICICI LOMBARD GENERAL INSURANCE CO. LTD.,
AND ORS**

...
Advocate for Applicants : Mr. Kolhe Machindranath N.
Advocate for Respondent No.1 : Mr. A.G. Choudhari
Advocate for Respondent Nos.2 &3 : Mr. S.S. Randive & Mr. G.M. More

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 13th SEPTEMBER, 2019.

ORDER :

. Both these applications have been filed by the original claimants for withdrawal of the amount. The first one is filed by the widow and the minor son and another is by parents of the deceased.

2. Amount of Rs.1,37,53,261/- has been deposited. Learned Advocate appearing for the insurance company raises strong objection for withdrawal of the amount on the ground that the point of contributory negligence was not considered by the tribunal, so also, the manner in which the accident had taken place. Though the police papers were

pointed out, the quantum has also been challenged. Taking into consideration the objections those have been raised, yet also the fact that those points in appeal were already raised before the tribunal and the tribunal has considered them, yet held the insurance company responsible, jointly and severally, to pay the amount of compensation. Definitely, case is made out for partial withdrawal of the amount.

3. Taking into consideration the apportionment that has been made by the learned tribunal and from the amount that was required to be given by way of Account Payee cheque, the applicants in Civil Application No.10426 of 2019 are allowed to withdraw amount of Rs.3,50,000/- each. Further applicant No.2 in Civil Application No.10421 of 2019 is minor, therefore, he cannot be allowed to withdraw any amount. So also, as per the apportionment, already Rs.37,00,000/- were directed to be deposited in respect of his share. Applicant No.1-widow is allowed to withdraw amount of Rs.8,00,000/-. Rest of the amount be invested in fixed deposit in consonance with the award passed by the tribunal.

4. Applicants in both the applications shall file 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.

5. Civil Applications stand disposed of accordingly.

(SMT. VIBHA KANKANWADI, J.)

SCM