

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

931 CIVIL APPLICATION NO.616 OF 2019
IN FAST/34712/2017

YADAV SHANKAR AHIRE (PATIL) AND ORS
VERSUS
M/S SHRIRAM GENERAL INSURANCE CO. LTD., THR ITS BRANCH
MANAGER / AUTHORISED SIGNA

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Advocate for Applicant : Mr. C.V. Bhadaner
Advocate for Respondent No.1 : Mr. S.S. Dargad h/f
Mr. S.G. Chapalgaonkar
Advocate for Respondent Nos. 5 and 6 : Mr. V.P. Raje

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CORAM : V.L. ACHLIYA, J.

DATED : 11th APRIL, 2019

PER COURT:-

1. The applicant – claimant has filed this application for withdrawal of amount of Rs.2,27,863/- deposited by the respondent no.1 – insurance company in terms of the conditional order passed by this Court to stay the execution of the award.
2. Heard learned counsel for the applicant and the respondent no.1 – insurance company as well as the counsel representing respondent nos. 5 and 6.
3. In brief, it is the contention of learned counsel for the respondent no.1 – insurance insurance company that there was a breach of policy condition that and deceased was travelling as a passenger in a goods vehicle and the risk of the applicant was

not covered in terms of policy. It is submitted that in the F.I.R. lodged as well as the statement recorded, it has been categorically stated that the deceased was accompanying the driver in the capacity of his friend and not as a cleaner as pleaded in the application. In this background, the learned counsel submits that the appellant has good case to succeed in the appeal and in case, the application is allowed, it will be difficult to recover the amount in the event the the appeal is allowed or the award is modified.

4. On the other hand, the learned counsel for the applicant submits that the appellant - insurance company has adduced no evidence to establish its defence. It is submitted that the deceased was travelling as a cleaner and liability to pay the compensation was very much covered in the policy and this issue has been discussed in detail by the Tribunal.

5. Considering the submissions advanced, I am of the view, passing of following order would meet the ends of justice.

ORDER

[i] Subject to outcome of the appeal, the applicants – claimants are permitted to withdraw amount of Rs.1,27,000/- on furnishing undertaking to the satisfaction of the Registrar (Judicial) to the effect that in the event the appeal is allowed and the award is modified or set aside and the applicant is required

to re-deposit the amount withdrawn, the applicant shall deposit the same within a period of eight weeks from the date of such order.

[ii] After making payment of Rs.1,27,000/-, the balance amount be invested in the fixed deposit initially for a period of 28 months with any Nationalized bank with standing instructions to renew the same for further period till disposal of the appeal.

[iii] The application is disposed of in above terms.

(V.L. ACHLIYA)
JUDGE

SPR