

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

**52 CIVIL APPLICATION NO.13953 OF 2019
IN FA/2348/2016**

**ASHABAI ROHIDAS NIKAM AND ORS
VERSUS
NEW INDIA ASSURANCE CO. LTD. AND ANR**

...
**Advocate for Applicants : Bhokariker Madhav M
Adv.S. G. Chapalgaonkar For R/1**
...

**CORAM : MANGESH S. PATIL, J.
DATE : 04.12.2019**

PC. :-

Heard both the sides.

- 2] This is an application by the original claimant seeking withdrawal of the amount of compensation deposited by the appellant insurance company.
- 3] The learned advocate for the insurance company strongly opposes the application. He submits that in fact there was no contact between the deceased and the vehicle. The vehicle is a JCB machine which was being used for filling up the gap between the ground and outer wall of the well. The deceased was onlooker. When the wall of the well collapsed and he died of drowning and it cannot be said that the accident has occurred due to use of any motor vehicle. He would further submit that even there is error in assessing compensation.
- 4] Apparently after going through the entire evidence and the law, the Tribunal has taken a plausible view that it is a case of contributory negligence and the driver of the JCB has been held responsible only to the extent of

2/3rd. The compensation has also been assessed accordingly. The monthly income of the deceased after taking into consideration the future prospectus, the compensation has been decided by referring to the decision in the case of Sarla Varma (Smt.) & Ors V/s Delhi Transport Corporation and Anr; (2009) 6 SCC 121.

5] Considering all these aspects, except the minor applicants nos.3 to 5, the rest of the applicants deserve to be paid the amount. Application is allowed to the extent of Applicant nos. 1,2,6 and 7. They are allowed to withdraw the amount of which they have been found entitled to by the Tribunal by furnishing undertaking in usual terms.

[MANGESH S. PATIL, J.]

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