

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 CIVIL APPLICATION NO.13162 OF 2019
IN FAST/2057/2019

SUNITA RAJKUMAR PENDKAR AND ORS
VERSUS
THE ORIENTAL INSURANCE CO. LTD., THR ITS BRANCH MANAGER,
AURANGABAD AND ANR

...
Advocate for Applicants : Mr. Pathan Hamzakhan I.
Advocate for Respondent : Mr. Dhananjay P. Deshpande
...

CORAM : MANGESH S. PATIL, J.

DATE : 06.12.2019

PER COURT :

Heard both the sides.

2. The learned advocate for the insurance company opposes the application on the ground that the Tribunal has not considered the factum of contributory negligence in as much as the deceased was riding a motorcycle triple seat and had abruptly come on the road. The learned advocate further submits that going by the decision in the case of **National Insurance Company Limited V/s. Pranay Sethi and Ors.**; AIR 2017 SC 5157, only 15% of the salary should have been added as future prospects since the deceased was aged more than 50 years but the Tribunal has added 30%.

3. Considering all the aforementioned aspects when *prima facie* the motorcycle was dashed by the Truck from behind and also the fact that the deceased was in a permanent employment drawing a fixed salary and

future prospects should have been added @ 15%, the applicants original claimants deserve to be paid 75% of the amount deposited in this Court subject to usual terms and conditions. However taking into account the fact that the claimant no. 4 i.e. Son of the deceased being still a minor, such withdrawal cannot be permitted to his extent.

4. The application is allowed. The applicant nos. 1,2 and 3 are allowed to withdraw 75% amount, in the proportion laid down by the Tribunal in the impugned award, by furnishing undertaking in usual terms. The stay granted in Civil Application No.2237/2019 shall now is confirmed. The application for withdrawal is disposed of.

(MANGESH S. PATIL, J.)

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