

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

913 CIVIL APPLICATION NO.13163 OF 2019  
IN FAST/2063/2019

RAJSHRI GANGADHAR RACCHAWAR 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 pillion on motorcycle triple seat which 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 deserves to be paid 75% of the amount deposited in this Court subject to usual terms and conditions.

4. The application is allowed. The applicants 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.2239/2019 in F.A.(ST) No.2063/2019 shall now stand confirmed. Both the applications for withdrawal and stay are disposed of.

**(MANGESH S. PATIL, J.)**

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