

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.1081 OF 2019
IN
FIRST APPEAL NO.2373 OF 2018
(Gopal Bhomaram Jat/Choudhari and others Vs. The
Divisional Manager, National Insurance Co. Ltd.,
through its Authorised Signatory, Aurangabad)

Mr. Madhav Gude, Advocate holding for Mr. A.D. Aghav,
Advocate for the applicants
Mr. V.R. Mundada, Advocate for respondent No.1

CORAM : SUNIL K. KOTWAL, J.

DATE : 5nd APRIL, 2019

ORDER :

Heard learned counsel for the applicants and
learned counsel for the insurer of the offending
vehicle.

2. Learned counsel for the insurer submits that
unless all parties in First Appeal are served, this
application cannot be heard and disposed of.

3. Learned counsel for the applicants submits
that the compensation amount with accrued interest

thereon is already deposited in this Court by the insurer of the vehicle and joint and several liability is fastened against original respondent Nos.1 to 3, including insurer of the vehicle. Considering this circumstance, I do not find any legal impediment to hear this application for withdrawal.

4. Learned counsel for the insurer submits that the policy of insurance was third party and the deceased was travelling by the offending vehicle as gratuitous passenger. However, at this premature stage, I refrain myself from expressing my opinion on merits of the matter.

5. Considering the place of residence of the applicants and minor age of applicant Nos.3, 4 and 5, I find it appropriate to allow applicant Nos.1 and 2 to withdraw only 25% amount of compensation with proportionate interest thereon, out of the amount deposited by the insurer, subject to condition that applicant Nos.1 and 2 shall file written undertaking in the First Appeal to refund the withdrawn amount as and when directed by this Court. The written undertaking shall be filed within a period of twelve weeks from the date of passing of this order. The balance 75% amount

shall be invested in fixed deposit in any nationalized bank till final disposal of First Appeal. The Civil Application is accordingly allowed and disposed of.

[SUNIL K. KOTWAL]
JUDGE

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