

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

37 CIVIL APPLICATION NO.13875 OF 2019
IN FA/1391/2013

NIRMALA VASANT SHENDE (WANI) AND ORS
VERSUS
THE ORIENTAL INSURANCE CO. LTD THR ITS DIV. OFFICE
ATAURANGABAD AND ORS

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Advocate for Applicants : Mr. Gandhi Amol S.
Advocate for Respondent : Mr. Avinash S. Deshpande.

CORAM : MANGESH S. PATIL, J.

DATE : 05/12/2019

PER COURT :

Heard both the sides.

2. The original claimants have once again sought to withdraw the money deposited by the appellant/Insurance Company in this Court while preferring the appeal. Earlier they were allowed to withdraw 50 % by the order dated 08.05.2013.

3. The learned advocate for the claimants submits that though the appeal has been age old, is not being disposed of. The applicants are being deprived of their claim. Only 50 % of the amount has been disbursed. They are in dire need of money because of the financial losses incurred in the business. Since the appeal is not being disposed of they may be allowed to withdraw the remainder of the amount deposited in the Court.

4. The learned advocate for the Insurance Company opposes the application. He submits that there is a dispute as to the proportion of negligence in as much as another vehicle was also involved in the accident and even the deceased was travelling in a third vehicle, therefore it would be appropriate to decide the appeal finally.

5. True it is that the appeal is due for admission for last so many years. The claim itself was filed in the year 2008 and till date the claimants have been able to procure the benefit only to the extent of 50 %.

6. Taking into account the reasoning given by the Tribunal, apparently there is *prima facie* error in applying multiplier and in not taking into consideration the future prospects.

7 It is in view of such state of affairs, in my considered view it would be appropriate to allow the original claimants to withdraw another 25 % of the amount deposited in this Court by furnishing usual undertaking with a specific understanding that the appeal shall be heard finally at the stage of admission on the next date.

8. The applicant No. 1 who is the mother of the deceased alone has been held entitled to claim the entire compensation as per the observations in paragraph No. 32 of the impugned judgment. Therefore she alone may be allowed to withdraw the amount.

(MANGESH S. PATIL, J.)

mkd