

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

**38 CIVIL APPLICATION NO.13606 OF 2019
IN FA/2215/2019**

**SHAIKH VAIDABEE SHAIKH NOOR AND ORS
VERSUS
PRAMOD CHANDRAKANT HUCCHE AND ORS**

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**Advocate for Applicants : Deshmukh Mohit R.
Adv.M. M. Ambhore For R/3**

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**CORAM : MANGESH S. PATIL, J.
DATE : 28.11.2019**

PC. :-

Heard both the sides.

2] The learned advocate for the insurance company opposes the application on the ground that it is coming with a specific defence about absence of valid and effective driving license by the driver of the truck. The learned advocate also submits that the injured is almost 60 years old and still her notional income has been taken at Rs.3000/- per month. The learned advocate further submits that it is a matter of collision between the two vehicles and the owner and the insurer of the other vehicle has not been arrayed as party and therefore the entire amount may not be allowed to be withdrawn.

3] I have carefully gone through the impugned award. The notional income of the applicant has been held to be Rs.3000/- p.m. and taking the

loss of earning capacity proportionate to 30% disability certified by the Doctor the loss has been assessed. As far as the applicant is concerned, she was a passenger in the other vehicle which was an auto-rickshaw and vis-a-vis her question of contribution would not arise and as far as she is concerned it would be a matter of composite negligence.

4] The Application is allowed. The applicant is allowed to withdraw the amount by furnishing an undertaking that in case the appeal succeeds she will have to refund the amount. The Application is disposed of.

[MANGESH S. PATIL, J.]

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