

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1507 OF 2019
IN
FIRST APPEAL NO.1113 OF 2018**

Smt. Sindhubai Laxman Shinde and
Ors. ...Applicants

In the matter between

Bajaj Alliance General Insurance ...Appellant
Versus
Smt. Sindhubai Laxman Shinde and
Ors. ...Respondents

.....

Mr. Sachin Gite for the Applicant/Respondent No.1. in FA/1113/2018.
Mr. Sarthak S. Diwan for the Appellant.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 21st JUNE, 2019.

P.C.:-

The Applicants, who are the Respondents in the Appeal, have sought withdrawal of compensation deposited pursuant to the award dated 31st January, 2018 in M.A.C.P. NO.954 of 2013 made by the learned Member, M.A.C.T., Nashik.

2. The Applicant No.1 is the widow and the Applicant Nos.2 and 3 are the children of the deceased-Laxman, who expired in a

motor vehicular accident involving Motor Cycle No.MH-15-BQ-3606. By the impugned judgment and award the Claims Tribunal has awarded compensation of Rs.8,44,251/- with interest at the rate of 7% p.a. from the date of petition till realization of entire amount.

3. The learned counsel for the Appellant states that the Appellant has raised the issue of breach of terms and conditions of policy and contributory negligence. Though the Tribunal has accepted the contention of the contributory negligence, the Tribunal has deducted only 10% towards contributory negligence. He submits that in fact situation the deduction ought to have been 40%.

4. Considering the reasons stated in the application and also considering the grounds raised in the appeal memo, in my considered view interest of justice would be met if the Applicants are permitted to withdraw 50% of the compensation alongwith the proportionate interest. Out of which 30% be paid to the Applicant No.1 and 10% each to the Applicant Nos.2 and 3.

5. Balance amount be reinvested in any Nationalised Bank till the disposal of the Appeal on merits. The Civil Application stands

disposed of.

6. It is made clear that the payment is subject to the final outcome of the Appeal. The Applicants shall file an undertaking before the Tribunal that they will abide by the final order that may be passed in the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)