

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

**CIVIL APPLICATION NO.2059 OF 2015
IN
FIRST APPEAL NO.1458 OF 2014**

Smt. Shaila Sanjeev Kangane and
Anr.

...Applicants

Versus

Bajaj Allianz General Insurance Co.
Ltd.

...Respondent

.....

Mr. Milind M. Sathaye for the Appellant in FA/1458/2014, for the Applicant in CAF/4750/2013 and for the Respondent in CAF/2059/2015.

Mr. Anilkumar K. Patil for the Respondent Nos.6 and 7 in FA/1458/2014 and for the Applicant in CAF/4750/2013.

Ms Preeti Limbachiya with Mr. Khalid Kazi for the Respondent No.1 in FA/1458/2014 and CAF/4750/2013 and for the Applicant in CAF/2059/2015.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 7th FEBRUARY, 2019.

P.C.:-

The Applicant herein has sought withdrawal of amount deposited by the Respondent-Insurance Company as per the judgment dated 26th July, 2013 in M.A.C.P. No.24 of 2010 passed by the learned Additional Member, Motor Accident Claim Tribunal, Pune.

2. Ms Preeti Limbachiya, the learned counsel for the

Respondent, opposes disbursal of the amount on the ground that the Claims Tribunal has not considered the issue of contributory negligence. She further submits that there is no loss of income as the Claimants/Applicants continue to receive the income from agricultural properties. She therefore, contends that the Claims Tribunal has erred in considering loss of earning as Rs.25,000/- per month.

3. Having considered the submissions advanced by the learned counsel for the respective parties, as well as having perused the records, in my considered view it would be just and proper to permit the Applicants to withdraw 50% of the amount deposited by the Respondent. The Civil Application stands disposed of.

4. 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.)