

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

**CIVIL APPLICATION NO. 4139 OF 2018
WITH
CIVIL APPLICATION NO. 4140 OF 2018
IN
FIRST APPEAL (ST.) NO. 30862 OF 2018**

Bajaj Alliance General Insurance
Company Ltd.Applicant
V/s.
Baban Vaijanath Khade and ors.Respondents

**WITH
CIVIL APPLICATION NO. 1085 OF 2019
IN
FIRST APPEAL (ST.) NO. 30862 OF 2018**

Baban Vaijanath Khade and ors.Applicants
In the matter between :-
Bajaj Alliance General Insurance
Company Ltd.Appellant
V/s.
Baban Vaijanath Khade and ors.Respondents

Mr. Sujay Gangal for the applicants in CAF/1085/2019 and for
respondent nos.1 and 2.
Ms. Yogita D. Chitnis for the applicant/appellant and for
respondents in CAF/1085/2019.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 11th JUNE, 2019.**

P.C.:-

. Heard the learned counsel for the applicants and the learned
counsel for the respondent nos.1 and 2.

2. Civil Application No.4140/2018 :- By order dated 05/12/2018, this Court had granted ad-interim stay subject to deposit of the entire compensation with the Claims Tribunal within a period of eight weeks from the date of the order. The learned counsel for the applicant states that the applicant has deposited the entire compensation along with the interest as per the award. The said statement is not disputed by the learned counsel for the respondents. In the light of above, the execution of the impugned judgment and award is stayed till the disposal of the appeal.

3. Civil Application No.4140/2018 stands disposed of.

4. Civil Application No.1085/2019 :- The applicant has sought withdrawal of the amount deposited by the appellant / insurance company in terms of the judgment and award dated 15/01/2018 passed by the Member, Motor Accident Claims Tribunal, Baramati in MACP No.121/2012.

5. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.20,28,942/- inclusive of no fault liability, with interest @ 9% p.a. from the date of filing of the application till the date of realization.

6. The applicants who are the original claimants had filed an application under Section 168 of Motor Vehicles Act in view of the death of his daughter Ashwini in view of the injuries sustained in motor vehicular accident on 14/02/2011. It is the case of the applicant that Ashwini had sustained head injuries and as a consequence thereof, lost her mental control. It is stated that on account of her mental condition, she met with a train accident on 24/01/2012 and died on the spot.

7. The learned counsel for the respondent nos.1 and 2 has opposed the application mainly on the ground that there is no nexus between the accident and the death of Ashwini.

8. I have perused the records. The material on records prima facie indicates that said Ashwini had met with an accident on 14/02/2011 involving a dumper bearing no.MH-12-FZ-3535 which was undisputedly insured by the appellant – insurance company. The material on record prima facie indicates that the said Ashwini had sustained several injuries as a result of the said accident. The question whether the head injuries sustained in the said accident had resulted in her losing mental control, is a question which will have to be decided on merits. However, considering the grounds raised on the appeal, in

my considered view, it would not be appropriate to allow withdrawal of the entire compensation. Hence, the applicants are allowed to withdraw 40% of the compensation deposited by the insurance company. The Tribunal to invest the balance amount in any nationalized bank till the disposal of the appeal.

9. It is made clear that the payment is subject to the final outcome of the appeal. The applicants shall give an undertaking before the Tribunal that they shall abide by the order that may be passed in the appeal.

10. Civil Application No.1085/2019 stands disposed of.

11. Issue notice to the respondent nos.3 and 4 in Civil Application No.4139/2018, returnable on 02/07/2019. Private service is permitted.

(SMT. ANUJA PRABHUDESSAI, J.)