

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION (CAF) NO. 1009/2019

IN

CIVIL APPLICATION (CAF) NO. 3495/2018

IN

FIRST APPEAL NO. 317/2019

**National Insurance Company Ltd., through its Regional Manager, Regional
Office, Nagpur.**

...Versus...

Smt. Shyamkala wd/o Rajesh Partaki and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri C.A. Anthony, counsel for the appellant.

Shri A.R. Rishi, counsel for the respondent nos. 1 to 5.

CORAM : ARUN D. UPADHYE, J.

DATE : 15/04/2019.

Heard learned counsel for the respondent Nos. 1
to 4.

The learned counsel for respondent has submitted that respondent No.1 is the mother, and the respondent Nos. 2 to 4 are the minor children, and therefore, she may be permitted to withdraw the amount. He also submitted that the respondent No.5 died during the pendency of the appeal. However, learned counsel for the appellant has objected on the ground that deceased was not identified as per post-mortem report, and also income of the deceased was not proved.

Considering the submissions of both the sides and considering the impugned judgment and award, I am of the view that respondent at the most entitled to withdraw her share only. The respondent Nos. 2 to 4 are minors and their share cannot be permitted to withdraw .

It is submitted that the appellant has deposited amount of Rs. 12,00,090/-. The respondent No.1 is permitted to withdraw $\frac{1}{4}^{\text{th}}$ share i.e. Rs. 3,00,000/- on filing usual undertaking to the effect that, she will refund the amount in case appeal is allowed. Remaining amount be kept in Fixed Deposit till disposal of the appeal.

The learned counsel for the respondent Nos. 1 to 5 to file necessary pursis, informing the death of respondent No.5.

Civil application is allowed in the aforesaid terms.

JUDGE