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

936 **CIVIL APPLICATION NO.3176 OF 2017
IN FA/336/2017**

VEERSINGH TEDYA PAWRA (VASAVE) AND ANR
VERSUS
CHOLAMANDALAM GENERAL INSURANCE CO. LTD. THR
ITS BRANCH MANAGER AURANGABAD AND ANOTHER

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Mr.D.A. Mane h/f Mr.D.M. Pingale, Advocate for applicants.
Mr.S.S. Dargad h/f Mr.S.G. Chapalgaonkar, Advocate for respondent no.1
Mr.G.D. Jain, Advocate for respondent no.2.

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CORAM: V.L. ACHLIYA,J.
DATE : 22.01.2020

ORAL ORDER:

The applicants-appellants have moved this application seeking withdrawal of amount deposited by the appellant-insurance company.

2. Heard learned counsel for the applicants-claimants and Advocate representing the respondent - insurance company.

3. Learned counsel for the appellant - insurance company opposed the application with contention that the risk of the deceased daughter of the applicants was not covered

under the terms of policy. The deceased was travelling in trolley and in terms of the policy, the insured had paid additional premium of Rs.50/- to cover the risk of the driver. No premium was paid to cover the risk of coollies/labours employed in trolley attached to the tractor. It is submitted that the deceased cannot be termed as third party so as to claim the compensation. In absence of contract of insurance between the appellant-insurance company and insured to cover the risk of the deceased daughter of the applicants, the applicants are not entitled to claim the compensation from the appellant - insurance company. Liability to pay the compensation alone stands against the owner of the vehicle.

4. On the other hand, learned counsel for the applicants support the judgment and submits that the Tribunal has thoroughly considered the challenge raised. It is observed that the risk of the deceased was duly covered under the terms of policy. It is further submitted that even if the stand of the appellant is accepted, at the most the order to pay and recover can be passed in the matter.

5. On due consideration of submissions advanced, I am of the view that passing of following order would meet the ends of justice :-

ORDER

(i) The application is partly allowed.

(ii) The applicants are permitted to withdraw the amount to the extent of 50% of the amount deposited by the appellant-insurance company on furnishing the written undertaking that in the event award is set aside or modified, the applicants shall refund the amount within four weeks from the date of passing of order.

(iii) After making the amount to the extent of 50% of amount deposited by appellant -insurance company, the balance amount be invested with any Nationalized Bank initially for the period of two years with standing instructions to renew the same till further orders from the Court.

(iv) The order of withdrawal of amount shall be subject to final outcome of the Appeal.

(v) The Civil Application is disposed of in above terms.

[V.L. ACHLIYA]
JUDGE

SGA