

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

**938 CIVIL APPLICATION NO. 5132 OF 2020
IN
FIRST APPEAL NO. 2421 OF 2019**

**MONALI ICCHARAM TADE AND ORS.
VERSUS
THE NEW INDIA ASSURANCE CO. LTD.,
AURANGABAD AND ANR.**

...
Mr. M.M.Bhokarikar, Advocate for
applicants.
Mr. M.M.Ambhore, Advocate for R-1.
Mr. P.S.Shendurnikar, Advocate for R-2.

...
**CORAM : V.L.ACHLIYA, J.
DATE : 21/08/2020**
...

PER COURT :

1. The applicants have moved this application seeking withdrawal of amount deposited by appellant/ Insurance company for the reasons set out in detail in the application.

2. Heard learned counsel for applicants and counsel representing respondent Nos. 1 and 2. Perused the Award passed by Tribunal.

3. In brief, it is the contention of learned counsel for appellant/Insurance company that appellants have good case to succeed in appeal. The deceased who

was driving the motorcycle hit the stationery vehicle parked on the left side of road from the rear side. The deceased had no licence to drive the motorcycle.

4. On the other hand, learned counsel for applicants/claimants submits that the Tribunal has passed the Award after due assessment of evidence and defence set up by the appellant/Insurance company. It is submitted that the vehicle was parked in the mid of the road without precautionary measures to avoid the accident.

5. On due consideration of the submissions advanced and the challenge raised in Appeal, I am of the view that there is arguable case to be considered in favour of appellant.

6. In the facts and circumstances of the case, the order in following terms would meet the ends of justice.

ORDER

[i] The applicants are permitted to withdraw the amount to the extent of Rs. 3 Lakhs on furnishing undertaking to the effect that in case the Award is set aside/mofified, the applicants shall redeposit the amount within eight weeks from the date of passing of order

by this Court.

[ii] Out of the amount of Rs. 3 Lakhs, the amount of Rs. 2 Lakhs be paid to the applicant No. 1 i.e. wife of deceased and Rs. 50,000/- each be paid to applicant Nos. 4 and 5, the parents of deceased. The balance amount be invested in Fixed Deposit initially for a period of three years with standing instructions to reinvest the same till further orders from the Court.

[iii] The interest accrued over the amount invested in Fixed Deposit be paid to applicant No. 1 in the regular interval of three months by transferring the amount in her savings bank account for the maintenance of herself and her children i.e. applicant Nos. 2 and 3 as well as co-applicants, the applicant Nos. 4 and 5. The arrangement to pay the interest after every three months shall remain in operation till further orders from this Court or disposal of Appeal whichever is earlier.

[iv] The payment of amount including interest to applicants shall be subject to final decision in Appeal.

7. The applciation disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP