

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

**924 CIVIL APPLICATION NO.7699 OF 2020
IN FAST/31199/2019**

HIRABAI BHANUDAS SHINDE AND ANR

VERSUS

KAKADE TOURS AND TRAVELS AND ANR

Mr.M.R. Deshmukh, Advocate for the applicants/claimants.
Mr.V.N. Upadhye, Advocate for appellant-insurance company

CORAM : V.L.ACHLIYA,J.

DATED : 08.12.2020

P.C. :-

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

02. Learned Counsel Mr. Upadhye for the appellant- insurance company opposed the application with contention that the appellants have good case to succeed in appeal. It is submitted that there was delay of 7-8 days in lodging the complaint. It is submitted that in the facts and circumstances of the case the possibility of vehicle insured with the appellant being falsely involved to secure compensation cannot be ruled out. It is further submitted that though the claimants have claimed that the deceased was earning Rs. 10,000/- per month as a driver, except oral evidence no supporting evidence has been adduced to prove income

of the deceased. It is submitted that in the facts and circumstances of the case, income of the deceased cannot be considered more than Rs.6000/- per month.

03. Learned Counsel for the claimants submits that the factum of the accident has not been disputed by the owner/insured. In the written statement submitted the owner-insured disputed the negligence of the driver.

04. On due consideration of submissions advanced and challenge raised in the appeal, I am of the view that the following order would meet ends of justice.

i. Applicant Nos.1 and 2 are permitted to withdraw an amount to the extent of Rs.7,00,000/- (Rupees Seven Lakhs) out of amount deposited by the appellant – insurance company. The amount be paid to appellant Nos. 1 and 2 in equal proportion.

ii. After making payment of Rs.7,00,000/- (Rupees Seven Lakhs) in equal proportion to applicant Nos.1 and 2, balance amount be deposited in fixed deposit in any nationalized bank and interest accrued thereon be paid to applicant Nos.1 and 2 in equal proportion after every three months by transferring the amount in their respective account.

iii. Withdrawal of amount and payment of interest shall be subject to final outcome of appeal. The applicants shall furnish an undertaking before the Tribunal that in the

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event the award is set aside or modified, the applicants shall re-deposit the amount within eight weeks from the date of passing of such order.

05. The application is disposed of in above terms.

[V.L.ACHLIYA,J.]