

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

**60 CIVIL APPLICATION NO.7361 OF 2020
IN FAST/37991/2019**

**FIRDOS ALIM PATHAN AND ORS
VERSUS
THE NEW INDIA ASSURANCE CO. LTD., AND ANR**

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Advocate for Applicants : Mr. Gandhi Amol S.
Advocate for Respondent No.1 : Mr. A. S. Usmanpurkar.
Advocate for Respondent No.2 : Mr. K. N. Shermale.

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**CORAM : V. K. JADHAV, J.
DATE : 04.11.2020**

PER COURT :-

1. Heard both the sides.
2. The learned counsel appearing for the respondent / insurer has strongly resisted the application seeking withdrawal on the ground that the learned Tribunal has passed the pay and recover award. The learned counsel submits that there was a willful breach of the policy conditions and as such the pay and recover order is not justifiable. The learned counsel for the respondent / insurer submits that even the Tribunal has considered the income of the deceased on higher side without any supporting documents.

3. I have carefully perused the judgment and award passed by the Tribunal. It appears that otherwise the risk under the policy is covered except for the breach of the condition of policy on technical grounds. It further appears that though those grounds are raised, though specific issues have not been framed to that effect, even the respondent / insurer has not filed any application before the Tribunal for recasting the issues in terms of the defence raised by the respondent / insurer. Furthermore, in terms of the pay and recover order, the respondent / insurer has not filed any execution petition against the owner for recovery of the amount. It is thus not possible to direct the owner of the vehicle tempo involved in the accident to execute the security and then the claimants would be permitted to withdraw the amount. However, considering the contention raised by the respondent / insurer about the income of the deceased considered by the Tribunal on higher side, the applicants herein are permitted to withdraw the amount to the extent of 50 % since this is a death claim and the bread earner of the family met with an accidental death. Hence, the following order :

ORDER

- (i) Application is hereby partly allowed.
- (ii) The applicants / original claimants are permitted to withdraw an amount of Rs.10,00,000/- on furnishing an undertaking to the satisfaction of the Registrar (Judicial) of this Court.
- (iii) Civil Application is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-