

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

923 CIVIL APPLICATION NO.13679 OF 2019
IN
FA/668/2019

PRIYANKA RAVI KASTURE AND ORS
VERSUS
NATIONAL INSURANCE CO. LTD. AND ORS

...
Mr.S.V.Mundhe, Advocate for applicants.
Mr.A.S.Usmanpurkar, Advocate for R – 1.

...
CORAM : V.L. ACHLIYA, J.
DATE : 07/01/2020
...

ORAL ORDER:

1. The applicants have moved this application for withdrawal of amount deposited by Insurance Company.
2. Heard learned counsel for applicants and respondent No. 1/Insurance Company.
3. Learned counsel for Insurance Company opposed the application seeking withdrawal of amount with contention that appellant has good case to succeed in appeal. It is submitted that F.I.R. was lodged after 18 days of incident. In the report lodged first in time, the registration of vehicle i.e. Truck bearing No. MH-24/F-8899 is shown. Five months after the supplementary statement

shown to be recorded in which involvement of vehicle i.e. Truck bearing No. MH-24/F-9640 has been shown. It is submitted that claimant No. 2 examined in the case not as an eye witness to the incident. The pillion rider who was an eye witness to the alleged accident not examined in the case. Without any evidence establishing the involvement of vehicle insured with Insurance Company, the liability is fastened upon Insurance Company. It is submitted that in case the applicants are permitted to withdraw the amount, it will be difficult to recover the said amount.

4. On the other hand, learned counsel for applicants supports the order passed by Tribunal and submits that the order is well reasoned. It is submitted that except the stand taken by Insurance Company, no evidence has been adduced to establish that vehicle is falsely involved. It is submitted that driver and owner remained absent. The appellant has not examined driver of vehicle to establish its case.

5. On due consideration of submissions advanced, I am of the view the applicants be permitted to withdraw amount to the extent of

Rs. 1,50,000/- . The amount of Rs. 1,50,000/- be paid to applicant Nos. 1 to 3 in equal proportion on furnishing undertaking to the satisfaction of Registrar [Judicial] that in the event the Award passed by Tribunal is set aside, the applicants shall re-deposit the amount within four weeks from the date of order. The balance amount be deposited in Fixed Deposit in any nationalized bank initially for a period of two years with stipulation to renew Fixed Deposit till further orders. The amount of interest accrued be paid to applicant Nos. 1 to 3 in equal proportion after every three months by transferring the amount in their respective savings account till further orders from this Court.

6. The withdrawal of amount and payment of interest shall be subject to final out-come of appeal.

[V.L.ACHLIYA]
JUDGE

KNP