

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

**CIVIL APPLICATION NO.1216 OF 2021  
IN  
FIRST APPEAL NO.1127 OF 2020**

Mangal s/o. Laxman Kale and anr. ..Applicants

Vs.

Bajaj Allianz General Insurance  
Company Ltd., through its Manager ..Respondents

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Mr.N.B.Narwade, Advocate for applicants  
Mr.S.S.Dargad, Advocate h/f Mr.S.G.Chapalgaonkar, Advocate for  
respondent no.1

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**CORAM : R.G. AVACHAT, J.  
RESERVED ON : MARCH 10, 2021  
PRONOUNCED ON : APRIL 06, 2021**

**ORDER :-**

This is an application for withdrawal of the amount deposited pursuant to the directions of this Court dated 18.08.2020.

2. The applicants are Class-I heirs of deceased - Laxman Kale, who met with an accident involving motor vehicles on 16.06.2012. He died on 19.06.2012 of the injuries suffered as a

result of the said accident. The applicants, therefore, preferred a petition being M.A.C.P. No.528 of 2013, for compensation. It was allowed on 03.10.2019 directing the respondents herein to jointly and severally pay Rs.15,84,800/-. Respondent no.1 – Insurance Company preferred appeal (First Appeal No.1127 of 2020) against the award dated 03.10.2019. Pursuant to the directions of this Court dated 18.08.2020, the insurance company has deposited entire amount under the award in this Court.

3. Learned counsel for the applicants would submit that the deceased was the sole bread winner of the family. The applicants are in dire need of the money for their maintenance. It would take time for deciding the First Appeal. He, therefore, urged for grant of the application.

4. Learned counsel for the respondent - Insurance Company would, on the other hand, submit that the rider of the motorcycle, which was insured by the insurance company, did not hold effective and valid licence. The insurance company

has, therefore, no liability to pay any compensation. As such, it has a good case in the appeal. It was also submitted by learned counsel that the Tribunal, on the same day, decided another petition for compensation arising out of said petition. Said petition was dismissed on merits on the ground of failure to prove rash and negligence on the part of the motorcycle rider. As such, there are two inconsistent findings recorded by the same Judge.

5. It was an accident involving two motor vehicles bearing registration nos.MH-45-M-5398 and MH-17-X-7011. The deceased Laxman was the pillion rider on the motorcycle bearing registration no. MH-17-X-7011. Since he was not riding the motorcycle involved in the accident, there is no question of his negligence or rashness, so as to hold the applicants herein to be not entitled for any compensation. On appreciating the evidence in the case, the Tribunal observed it to be a case of composite negligence. In such a case, liability is joint and several. The applicants herein were not parties to the petition, which has been dismissed by the Tribunal on the

same day. Same would not be, therefore, binding on the applicants herein.

6. So far as regards defence of 'no driving licence' is concerned, the impugned judgment indicates the respondent/insurance company to have not led any evidence in this regard. It would take time to decide the First Appeal. The deceased was said to be the sole bread winner of the family of the applicants.

7. I am, therefore, inclined to allow the application in terms of the following order :-

- (i) The application is allowed.
- (ii) The applicants are permitted to withdraw 75% of the deposited amount. 50% of the amount be permitted to be withdrawn on furnishing undertaking to the satisfaction of the Registrar (Judicial) of this Court and 25% of the amount be permitted to be withdrawn on furnishing solvent security/surety in the like amount.
- (iii) The amount be paid to the applicants in the proportion given in the award.

(iv) Civil Application for withdrawal of amount stands disposed of accordingly.

**[R.G. AVACHAT, J.]**

KBP