

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

934 CIVIL APPLICATION NO.2304 OF 2021
IN FA/2254/2020

PANDHARINATH SURYABHAN AMBURE AND ANOTHER

VERSUS

NEW INDIA ASSURANCE CO. LTD., THR ITS DIV. MANAGER, AURANGABAD
AND ORS

...

Mr. S.B. Choudhari, Advocate for applicants

Mr. S.S. Dargad, Advocate h/f Mr. S.G. Chapalgaonkar, Advocate for the
respondent No.1

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15th JUNE, 2021.

PER COURT :

1 Present application has been filed for withdrawal of the amount.
Amount of Rs.29,13,040/- has been deposited in this Court by appellant-
New India Assurance Co. Ltd. On 20.11.2020

2 Heard learned Advocates of both sides.

3 Learned Advocate for the applicants submits that though both
the insurance companies of both the vehicles have been made liable to pay

compensation jointly and severally, the appellant-New India Assurance Company Limited has deposited 50% of the decretal amount only. He, therefore, prayed for withdrawal of the entire amount.

4 Learned Advocate Mr. S.S. Dargad holding for learned Advocate Mr. S.G. Chapalgaonkar for insurance company submits that the Tribunal has not apportioned the liability. Both the vehicles have been held responsible for the accident. The insurance company is also challenging the quantum of compensation, therefore, entire amount, that has been allowed, cannot be allowed to be withdrawn.

5 Taking into consideration the fact that the appeal has been admitted and though this Court by order dated 06.11.2020 had granted stay to the execution and implementation of the impugned award on condition to deposit the entire amount of award, it appears that only amount of Rs.29,13,040/- has been deposited apart from the statutory amount. Further, in view of the order dated 06.11.2020 by this Court, since that order was conditional that in the event of failure to deposit the amount the interim stay shall stand automatically vacated without further reference to the Court and thereafter that order has not been got modified by the appellant-insurance company before it could deposit the 50% amount only. By keeping all those points open and further observing that since the entire amount has not been

deposited though assured, as per the said order, the stay stood vacated; yet, by preserving the rights of the insurance company the applicants are allowed to withdraw the amount of Rs.10,00,000/- each.

6 Applicants shall file an undertaking within a period of eight weeks that they would make the said amount good, if directed, at the time of final disposal of the appeal.

7 Application stands disposed of accordingly.

(Smt. Vibha Kankanwadi, J.)

agd