

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

**WRIT PETITION NO.9154 OF 2021**

The New India Assurance Company Ltd.  
Through its Divisional Manager,  
Divisional Office, Aurangabad  
Tq.& Dist.Aurangabad.

..PETITIONER

VERSUS

- 1] Archana Wd/o. Yogesh Ghuge  
Age 34 years, Occu.Household
- 2] Purva D/o Yogesh Ghuge  
Age 12 years, Occu.Education
- 3] Yash S/o Yogesh Ghuge  
Age 10 years, Occu.Education

(Respondent Nos.2 & 3 being minor  
u/g of their mother i.e. Respondent No.1)

All R/o Plot No.10, Sujata Housing  
Society, Mayur Park, Harsool,  
Aurangabad, Tq. & Dist.Aurangabad.

- 4] Vishal Kumar S/o Kanta Prasad  
Age 51 years, Occu.Driver  
R/o At Sasurwada, Post.Hatti,  
Tq.Sillod, Dist.Aurangabad
- 5] Jagdish Haribhau Bedve  
Age Major, Occu.Business,  
R/o Rajeshree Shahu Nagar  
Near Bye Pass Road Sillod,  
Tq.Sillod, Dist.Aurangabad.

.. RESPONDENTS

[Respdt.Nos.1 to 3 -Orig.Claimants

Respdt.Nos.4 & 5 - Orig.Respdt.Nos.  
1 & 2]

...

Shri Mohit R. Deshmukh, Advocate for petitioner.  
Shri G.R.Vyawhare, Advocate for respondent nos.1 to 3.

...

**CORAM: MANGESH S PATIL,J.**  
**DATE : 22.09.2021**

**ORAL JUDGMENT:**

Advocate Mr.G.R.Vyawhare submits that he has instructions to appear on behalf of respondent nos.1 to 3 who are only the contesting respondents.

2] Heard. Rule. Rule is made returnable forthwith. With the consent of both sides, matter is heard finally at the stage of admission.

3] In a proceeding claiming compensation under Section 166 of the Motor Vehicles Act, 1988 instituted by the respondent nos.1 to 3 herein against the petitioner insurer of the offending vehicle and the owner and the driver, the petitioner preferred an application (Exh.50) seeking to call a witness from H.D.F.C. bank to prove a tripartite agreement entered into by the State Government, the Police Department in which the deceased was working and the H.D.F.C. bank, whereunder the bank had undertaken a liability to pay some compensation to the dependents of police personal who meet accidental death. The application has been rejected by the

impugned order. Hence this Writ Petition.

4] Whether and to what extent the compensation receivable by the respondent nos.1 to 3 on account of accidental death in view of the liability undertaken by the bank and its effect on the quantum of the compensation to be awarded to them is a matter which can be gone into and decided by the Tribunal while assessing the compensation. The petitioner cannot be deprived of an opportunity to call a witness to prove that the respondent nos.1 to 3 indeed received something under the tripartite agreement.

5] The learned Member of the Tribunal ought to have borne in mind the aforementioned facts and circumstances but has proceeded to reject the application as if he was called upon to decide even the effect of such amount received by the respondent nos. 1 to 3, which issue/point he should have left to be decided with the main proceeding by extending both the sides to make submissions in that respect.

6] In the light of the above circumstances, the Writ Petition is allowed. The impugned order is quashed and set aside. The Application (Exh.50) stands allowed. The Rule is made absolute.

**[MANGESH S. PATIL,J.]**