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

**917 CIVIL APPLICATION NO.2404 OF 2021
IN FA/894/2020**

**JANABAI SUKHDEO GAYAKE AND ORS
VERSUS
THE NEW INDIA ASSURANCE CO. LTD., THR ITS BRANCH
MANAGER AND ORS**

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Advocate for Applicants : Mr. Wagh Umakant U
C.k.shine For R/4 Copy Served On Adv D.p.deshpande For
R/1.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 17th June, 2021.

PER COURT :-

1. Heard both sides.
2. As regards the present application is concerned, it is filed in the First Appeal filed by the insurance company. There is also another insurance company against whom Award was passed and it is said that the Tribunal had apportioned the liability of both the insurance companies to 50-50. The other insurance company, i.e. present Respondent No.3, had also filed an appeal. However, learned Advocate Mr. Wagh, who is representing the applicants, is making a statement that the applicants have not withdrawn any amount from that appeal. Now, as regards present Respondent No.1, i.e. original appellant, is concerned, it is submitted on behalf of them that it is the insurance company of the trolley only and an order of 'Pay and Recover' has been made. The liability difference is being challenged. However, when 'Pay and Recover' order

(2)

is passed, the interest of the insurance company appears to be protected and, therefore, there is no hurdle in allowing partial withdrawal of the amount. The amount that is deposited by present Respondent No.1 – insurance company is at Rs.4,67,337/- apart from the statutory amount. There are two claimants and, therefore, they are allowed to withdraw the amount of Rs.1,50,000/-.

3. The 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.

4. The Civil Application stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV