

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 CIVIL APPLICATION NO.13873 OF 2021
IN FA/3746/2016

ASMITA PRASHANT GAIKWAD AND ORS
VERSUS
THE NEW INDIA INSURANCE CO. LTD., THR ITS BRANCH MANAGER,
OSMANABAD AND ANR

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Mr Majit Shaikh, Advocate h/f Mr P.S. Chavan, Advocate for applicants
Mr S.S. Dargad, Advocate h/f Mr S.G. Chapalgaonkar, Advocate for respondent
no.1

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 21st DECEMBER, 2021

PER COURT :

1. It is an application for withdrawal of amount moved by the applicant, more particularly to the extent of share of applicant no.3, who has now become major.
2. Heard Mr Majit Shaikh, Advocate appearing for applicants and Mr S.S. Dargad, learned Advocate appearing for respondent no.1.
3. Mr Majit Shaikh, learned Advocate for applicants invited my attention to the copy of order passed by this Court (Coram : R.G. Avachat, J.) in Civil Application No.4382 of 2021 in First Appeal No.3746 of 201611 dated 9.6.2021. He submitted that applicant no.2 - Prathamesh, after becoming major was allowed to withdraw Rs.5 lakhs out of his share to satisfy his educational expenses. On the same line, learned Advocate for the applicant seeks withdrawal of Rs.5 lakhs in order to meet the educational expenses of applicant no.3.
4. Mr S.S. Dargad, learned Advocate appearing for respondent no.1 strongly opposed to allow this application. He invited my attention to copy of F.I.R. and submitted that involvement of vehicle itself is suspicious. F.I.R. is lodged after

two days. Supplementary statements came to be recorded after three days. If these facts are taken into consideration, it is a clear case of suspicious involvement of the vehicle and there is difference in numbers of vehicles. He further submitted that it is also a case of contributory negligence. He further pointed out that the applicants/claimants have already withdrawn 50% of the amount of compensation deposited in this Court. As such, there is no need to grant permission to applicant no.3 to withdraw any amount.

5. Having regard to the submissions made by learned Advocates for both the sides, I have gone through the order passed by this Court (Coram : R.G. Avachat, J.) in Civil Application No.4382 of 2021 in First Appeal No.3746 of 201611 dated 9.6.2021. This Court was pleased to allow applicant no.2 - Prathamesh to withdraw Rs.5 lakhs out of his share in order to satisfy educational expenses and Rs.5 lakhs was directed to be invested in fixed deposit in the nationalised Bank in his name.

6. Though Mr Dargad, learned Advocate for respondent no.1/insurance Company has raised strong objection to grant any more withdrawal, the applicants have placed on record *bona fide* certificate of applicant no.3 which indicates that applicant no.3 is taking education in Bhagwant Institute of Technology, Barshi. He is studying in Diploma course in Mechanical Engineering. Even though the applicant no.1, mother was permitted to withdraw the amount falling to her share as per apportionment made by the tribunal and applicant no.2 - Prathamesh was allowed to withdraw the amount of Rs.5 lakhs, by looking to the genuine need of educational expenses of applicant no.3, I am convinced to allow applicant no.3 to withdraw amount of Rs.2,50,000/- subject to furnishing usual undertaking with the Registrar (Judicial) of this Court.

ORDER

- (i) Applicant No.3/Aditya Prashant Gaikwad is permitted to withdraw an amount of Rs.2,50,000/- out of his share deposited by the insurance company, now invested in fixed deposit under his name, on furnishing usual undertaking with the Registrar (Judicial) of this Court.
- (ii) The balance amount be invested in fixed deposit account in any nationalised Bank in the name of application no.3 for a period till decision of the appeal.
- (iii) The Civil Application is allowed and disposed of accordingly.

(SHRIKANT D. KULKARNI, J.)

VVR