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

**939 CIVIL APPLICATION NO. 13853 OF 2019
IN FAST/2120/2019**

**SADASHIV KALGA CHAURE AND ORS
VS
SBI INSURANCE COMPANY, THR ITS MANAGER,
AURANGABAD AND ORS**

Mr. Pramod C. Mayure, Advocate for the applicants
Mr. S. S. Patil, Advocate for respondent No.1

**CORAM : N. J. JAMADAR, J.
DATE : 05-03-2021**

P. C.

. Heard learned counsel for the applicants and learned counsel for respondent No.1-insurer.

2. This application is preferred seeking permission to withdraw the amount of compensation deposited by the respondent No.1-insurer in accordance with the judgment and award dated 08-01-2019 passed by the MACT, Nandurbar in MACP No.70/2015 alongwith interest accrued thereon.

3. The applicant No.1 is the husband of deceased Kalpanabai and applicant Nos. 2 and 3 are the children of the deceased.

4. Learned counsel for the respondent No.1 resisted the prayer of the applicants on the ground that the very fact as to whether the vehicle was insured with respondent No.1 is in serious dispute. Learned counsel further urged that the learned Member of the Tribunal misconstrued the quotation as insurance cover note and unjustifiably fastened the liability upon the respondent No.1.

5. In contrast to this, the learned counsel for the applicants invited the attention of the court to the observations of the tribunal in para Nos. 36 to 38 of the impugned judgment. Reliance is also sought to be placed on the vehicle information wherein the name of insurer finds mentioned.

6. The question as to whether the vehicle was insured with the respondent No.1 and the contract of insurance was subsisting can be legitimately determined at the time of final hearing and disposal of the appeal.

7. Having regard to the nature of the defence raised it may, however, be expedient in the interest of justice to allow the applicants to withdraw a portion of the amount of the compensation deposited by the respondent No.1.

8. In the circumstances of the case, allowing the applicants to withdraw the 50% of the amount deposited by the respondent No.1 would be appropriate. Hence, the following order.

ORDER

- i. The application stands allowed.
- ii. The applicants are permitted to withdraw the 50% of the amount deposited by the respondent No.1 alongwith interest accrued thereon, in pursuance of the impugned judgment and award, on furnishing an undertaking to the satisfaction of the learned Registrar (Judicial) of this Court.
- iii. The application stands disposed of.

[N. J. JAMADAR, J.]