

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

941 CIVIL APPLICATION NO. 1331 OF 2020

**SEEMA SUNIL KOMBDE AND ANR
VS
THE NEW INDIA INSURANCE CO. LTD. AND ANR**

Mr. Vivekanand B. Deshmukh, Advocate for the applicants
Mr. S. S. Dargad, Advocate h/f Mr. M. R. Deshmukh, Advocate for
the respondent No.1

CORAM : N. J. JAMADAR, J.

DATE : 05-03-2021

P. C.

. Heard learned counsel for the applicants.

2. This application is preferred seeking permission to withdraw the amount of compensation deposited by the appellant-insurer in terms of the judgment and award dated 29-07-2019 passed by the learned Chairman, MACT, Osmanabad in MACP No.320/2016. The applicants are wife and mother of the deceased Sunil Babanrao Kombde.

3. Learned counsel for the respondent No.1-insurer strongly resists the prayer for withdrawal of the amount. It was urged that the vehicle number MH-24-C-9978, which was insured by respondent No.1 was not at all involved in the accident. On the

contrary, the material on record indicates that the deceased had driven the motorcycle under the influence of liquor and gave dash to the bullock-cart. After about 45 days of the accident, the FIR came to be registered by the alleged pillion rider. Learned Chairman of the tribunal has not adequately considered the said aspect. Thus, prayer for withdrawal has to be rejected.

4. Per contra, the learned counsel for the applicant invited the attention of the court to the observations of the tribunal in para No.24 and 25 of the impugned judgment. It was urged that much mileage can be drawn from the MLC papers, the authenticity of which as regards the person who reported the accident is questionable.

5. Perused the impugned judgment. The submission sought to be canvased on behalf of the appellant-insurer warrants consideration in the backdrop of the time lag and the documents which support the version that competes in probability.

6. However, the applicant No.1 is widow of Sunil and applicant No.2 his the mother. Indisputably, the deceased was a bread earner of the family. In the circumstances, the applicants cannot be deprived of amount of compensation awarded by the tribunal, totally.

7. Thus, I am inclined to allow the applicants to withdraw

(3)

ca1331.20

50% of the amount of compensation deposited by the insurer.
Hence, the following order.

ORDER

- i. The application is partly allowed.
- ii. The applicant Nos. 1 and 2 are entitled to withdraw the 25% each of the amount of compensation deposited by the respondent No.1-insurer, alongwith interest accrued thereon, on furnishing separate undertaking to bring back the amount, in the event, it is held that they are not entitled to the amount of compensation, to the satisfaction of the learned Registrar (Judicial) of this Court.
- iii. Rest of the amount be invested in a fixed deposit.
- iv. The application stands disposed of.

[N. J. JAMADAR, J.]