

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO.3672 OF 2019

IN

FIRST APPEAL [STAMP] NO.6364 OF 2019

Chhabu S. Kamble & Ors.]...Applicant.

IN THE MATTER BETWEEN:

The Oriental Insurance Co.Ltd.]... Appellant.

Vs.

The Oriental Insurance Co. Ltd. & Anr.]...Respondents.

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Mr.T.J.Mendon for applicant in CAF no.3672 of 2019

Mr.Indrajeet R. Kulkarni a/w Renuka Birajdar for respondents in CAF No.3672/2019 and for appellant in FA(ST) 6364/2019 and for applicant in CAF 929/2019 and 930/2019.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 22ND MARCH, 2021

P.C. :

1. This is an application seeking withdrawal of the amount of compensation.
2. Heard Mr.T.J. Mendon, the learned Counsel for the applicant and Mr.Kulkarni, the learned Counsel for the appellant/insurer.
3. For the reasons stated in the application, more particularly, in paragraph 4 where it has been stated that the applicants were

completely depending upon the income of the deceased and due to his death, they have lost sole bread winner of the family, they do not have any independent source of income. Mr.Kulkarni, the learned Counsel for the appellant however, objects withdrawal of the amount of compensation by stating that the matter needs to be remanded as they were the insurer and the employer were proceeded ex-parte by the Commissioner for the employees compensation.

4. Mr.Kulkarni, the learned Counsel for the insurer submits that the entire amount with interest has been deposited.

5. At this stage, without going into the aspect as to whether despite due service the owner/insurer remained absent. At this stage, the applicants are permitted to withdraw 50% of the amount of compensation with accrued interest.

6. At the time of withdrawal, the applicants shall give an Undertaking that in case the appeal succeeds, they will refund the amount with interest subject to outcome of the appeal.

7. The application stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]