

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

**920 CIVIL APPLICATION NO. 139 OF 2022
IN
FIRST APPEAL NO. 3159 OF 2019**

**SHANKAR NANASAHEB KADAM AND ANOTHER
VS
THE NEW INDIA ASSURANCE CO. LTD. THR ITS AUTHORIZED
SIGNATORY, AURANGABAD**

Mr. Dnyaneshwar Patil, Advocate for the applicants
Mr. M. M. Ambhore, Advocate for the respondent NO.1
Mr. Shaikh Mazahar A. Jahagirdar, Advocate h/f Mr.
S. D. Tawshikar, Advocate for the respondent Nos. 4
to 6

CORAM : VINAY JOSHI, J.

DATE : 11-01-2022

P. C.

. This is an application seeking for withdrawal of compensation amount granted by the tribunal vide its judgment and award dated 28-05-2019.

2. The applicants are the parents of the deceased Suresh. On account of lack of sources for survival, they have claimed for withdrawal of the amount.

3. The learned counsel appearing for the respondent No.1-Insurance company has resisted this application by contending that the very involvement of the offending vehicle in the accident itself is in dispute.

4. Initially, the claim was preferred by widow and two minor children of deceased Suresh in which the applicants being parents of deceased were made as respondent Nos. 4 and 5. After recording the evidence, the tribunal held that there was involvement of insured vehicle and accordingly granted compensation.

5. Being aggrieved by the said judgment and award passed by the tribunal the Insurance Company has filed first appeal No. 3159 of 2019. However, for want of compliance it was came to be dismissed vide order dated 24-01-2020. The Insurance Company has takenout the civil application No. 3902 of 2021 for condonation of delay and for restoration of appeal. The said application is still pending as some of the respondents are yet to be served.

6. During pendency of the said restoration application, the original applicants i.e. widow and children of the deceased have moved this court vide civil application No. 3534 of 2021 seeking withdrawal. The order passed by this court dated 23-06-2021 indicates that the said application was also similarly resisted by the learned counsel for the insurer contending the defence of non-involvement of vehicle. Having regard to the said defence this court has allowed the partial withdrawal in favour of the widow and children. The court has also taken a note that the tribunal has awarded specified sum to the parents. However, since they did not seek withdrawal no order was passed to that effect.

7. On this background original respondent Nos. 4 and 5 i.e. parents of the deceased have come up to this court seeking withdrawal. Already this court has taken a view that though insurer took the defence of non-involvement of vehicle, however, partial compensation can be disbursed. Having regard to the nature of defence I deem it appropriate to permit the partial withdrawal to secure interest of both the sides. Moreover, yet the notices of restoration are to be served meaning thereby, it

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will take considerable time for deciding the restoration application. Till that time, the legitimate claim of parents cannot be suspended. In the circumstances, I deem it appropriate to permit the applicants to withdraw 50% of the amount i.e. Rs. 3,00,000/- [Rupees Three Lakhs] alongwith proportionate accrued interest, if any, each. In view of that the application is allowed and the applicant Nos. 1 and 2 are permitted to withdraw Rs. 3,00,000/- [Rupees Three Lakhs] each with proportionate interest and rest of the amount be invested. If the restoration application is not decided within six months, the applicants can revive their prayer for seeking further withdrawal and other reliefs. The application stands disposed of.

[VINAY JOSHI, J.]

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