

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

953 CIVIL APPLICATION NO.3402 OF 2022
IN FA/3408/2021

DAGDU S/O KANHAIYALAL PATIL AND ANR

VERSUS

THE NEW INDIA ASSURANCE CO. LTD.,
THR ITS IN-CHARGE (LEGAL HUB)
AURANGABAD AND ORS

...

Advocate for Applicants : Mr M.H. Patil
Advocate for Respondent No.1 : Mr S.R. Bodade

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 10th March, 2022

PER COURT :

1. It is an application for withdrawal of compensation amount moved by the applicants/original claimants.
2. Heard Mr M.H. Patil, learned counsel for the applicants/claimants and Mr S.R. Bodade, learned counsel for respondent No.1 /insurance company.
3. Mr Patil, learned counsel for the claimants submitted that the Tribunal after considering the rival pleadings of the parties, evidence on record and considering the arguments advanced by both the sides, was pleased to determine the compensation on account of death of son of the claimants.
4. The applicants/claimants are the parents of the deceased. The applicants/claimants may be allowed to withdraw 100% of the amount of compensation.
5. Mr Bodade, learned counsel for respondent No.1/insurance company strongly opposed to allow this application. He submitted that the insurance company has preferred this appeal and challenged the impugned Judgment and

award passed by the Tribunal on various grounds including contributory negligence of the deceased, who was driving motorcycle at the time of accident. He submitted that the deceased was not having driving licence to drive the motorcycle. He had not put on the helmet at the time of accident. The vehicle- Indica car was not at all involved in the accident, but it was planted later on. He further submitted that it is also a case of breach of policy. Mr Bodade, learned counsel has raised certain other grounds while opposing this application.

6. While deciding this application for withdrawal of compensation amount, I am not supposed to touch merits of the appeal. That exercise would be done while conducting final hearing of the appeal. It is a fact that the son of the claimants is met with death in motor vehicle accident. The Tribunal has awarded the compensation and respondent No.1/insurance company has deposited the same with accrued interest thereon in this Court.

7. Having considered the submissions of both the sides, and looking to the defence raised by respondent No.1/insurance company and in order to protect legal interest of the appellant involved in the appeal, it would be appropriate to allow the original claimants to withdraw 50% of the amount of compensation with accrued interest thereon with a direction to furnish usual undertaking with the Registrar (Judicial) of this Court. It may take care of apprehension of the appellant.

ORDER

(I) The application is hereby allowed.

(II) The claimants/applicants are hereby permitted to withdraw 50% of the amount of compensation with accrued interest thereon on furnishing usual undertaking with the Registrar (Judicial) of this Court.

- (III) After furnishing such undertaking, the Registry to make payment of 50% of the amount of compensation with accrued interest thereon to the applicants/claimants as per procedure.
- (IV) The civil application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

mta