

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

CIVIL APPLICATION NO.5540 OF 2022 IN FA/2892/2019

INDUBAI GORAKH YELMAME
VERSUS
NEW INDIA ASSURANCE CO. LTD., THR ITS DIV. MANAGER,
AURANGABAD AND OTHERS

....

Mr. Sartaj Khan H. Pathan, Advocate for the Applicant
Mr. S.S. Dargad, Advocate h/f Mr. S.G. Chapalgaonkar, Advocate
for Respondent No.1

....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 27th APRIL, 2022

PER COURT:-

1. It is an application for withdrawal of compensation amount moved by the applicant / claimant.
2. Heard Mr. Sartaj Khan Pathan, learned counsel for the applicants, Mr. S.S. Dargad holding for Mr. Chapalgaonkar, learned counsel for respondent No.1 / insurance company and Mr. V.Y. Bhide, learned counsel for respondent No.4
3. Mr. S.S. Dargad holding for Mr. Chapalgaonkar, learned counsel for the insurance company opposed to allow this application.

4. Mr Dargad, submits that the deceased was travelling in a Maruti Van, which was having capacity of 1 + 3 passengers. There were 11 passengers at the time of the accident. Out of 11 passengers, 6 passengers have lost their lives, including the son of present claimant. He submitted that the Tribunal has considered this fact and held that it is a case of breach of policy. He, therefore, urged to reject this application.

5. Mr. Bhide, learned counsel for respondent No.4 also argued on the same line.

6. Mr. Sartaj Khan Pathan, learned counsel for the applicant urged to allow this application in view of facts of the case.

7. Having considered the submissions of both the sides and looking to the facts of the case, I am convinced to allow the applicant to withdraw 50% of the amount deposited by the insurance company which would meet the ends of justice.

ORDER

(i) The application is hereby allowed.

(ii) The applicant / claimant is hereby permitted to withdraw 50% amount of compensation with accrued interest thereon on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court.

(iii) Remaining 50% of the amount of compensation with accrued interest thereon shall be invested in fixed deposit in any nationalized Bank with the clause of renewal.

(iv) The civil application is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane