

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

**918 CIVIL APPLICATION NO.4431 OF 2022
IN
FA/48/2022**

**DWARKABAI W/O NARAYAN BANGAR AND ANOTHER
VERSUS
THE BRANCH MANAGER, THE NEW INDIA ASSURANCE CO.
LTD., THROUGH ITS DIVISIONAL MANAGER/AUTHORIZED
SIGNATORY, AURANGABAD AND ANOTHER**

...

Advocate for Applicants: Mr. Suhas R. Shirsat

Advocate for Respondent No.1:

Mr. S. G. Chapalgaonkar

...

CORAM: SHRIKANT D. KULKARNI, J.

DATE: 08th APRIL, 2022

PER COURT:

1. It is an application for withdrawal of compensation amount moved by the applicants / original claimants.

2. Heard Mr. S. R. Shirsat, learned Counsel for the applicants / original claimants and Mr. S. G. Chapalgaonkar, learned Counsel for the appellant / insurance company. Perused the impugned judgment and award passed in M.A.C.P. No.214 of 2016.

3. It is revealed during the course of argument that the insurance company has preferred the appeal mainly on the ground of false involvement of the vehicle.

4. Mr. Shirsat, learned Counsel for the applicants / claimants invited my attention to the relevant paragraphs of the impugned judgment. He submitted that involvement of the vehicle has been duly proved by the claimants by examining investigating officer as well as examining one witness who has put criminal law in motion. He submitted that whatever defence raised by the insurance company has been turned down by the Tribunal by recording cogent reasons. The family of the claimants have lost sole earning member. They are in need of money. They may be permitted to withdraw the entire amount of compensation.

5. On the other hand Mr. Chapalgaonkar, learned Counsel for the appellant / insurance company strongly opposed to allow this application. He pointed out that alleged accident took place on

21.01.2016. The Spot Panchanama came to be drawn on 29.01.2016. One Subhash who happens to be the brother-in-law of the deceased has shown the spot of the accident and on that basis Spot Panchanama came to be drawn. It is mentioned in the A.D. Report and the Spot Panchanama that deceased was driving motorcycle and it hit in one ditch which resulted into accident. The deceased sustained serious injuries and succumbed to death. There was no involvement of vehicle as per the A.D. Report and the Spot Panchanama, collusive claim has been filed by the claimants by joining hands with the owner of the vehicle. There was considered delay in lodging of F.I.R. Having regard to the peculiar facts of the case he strongly opposed to allow this application.

6. Having regard to the submissions of both the sides, I have gone through the impugned judgment passed by the Tribunal, copies of police papers and copy of A.D. Report which is made available by the appellant insurance company. It would not be just and proper to touch the merits of the appeal

right now. However, it cannot be overlooked that the accident in question took place on 21.01.2016. The copy of A.D. Report suggests that the deceased himself had fallen down from the vehicle / motorcycle due hit in the ditch and sustained serious injury and succumbed to death. The same content finds place in the Spot Panchanama dated 29.01.2016. After 21 days of accident in question F.I.R. seems to have been lodged. I am not convinced to allow this application for withdrawal of the compensation. Hence, application is rejected.

7. Civil Application is disposed of.

[SHRIKANT D. KULKARNI, J.]

marathe