

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

13 CIVIL APPLICATION NO.6112 OF 2022
IN FA/2681/2021 WITH CA/9800/2022 IN FA/2681/2021

**RESHMA DHEERAJ SHETE
VERSUS
NATIONAL INSURANCE CO. LTD., THRU ITS ASSISTANT MANAGER,
AURANGABAD AND OTHERS**

Advocate for Applicants : Mr. Tarde Vivek V.
Advocate for Respondent No.1 : Mr. S.R.Bodade
Advocate for Respondent Nos. 2 and 3 : Mr. R. A. Tambe

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 12.12.2022

PER COURT :

Heard rival submissions. Both these applications are filed by the applicants -original claimants for withdrawal of compensation amount. The first application is filed by the wife of deceased whereas second application is filed by the parents of deceased. The learned Tribunal has awarded the amount of compensation to be distributed 50% to the wife and 50% to the parents.

2. The learned counsel for the respondent / appellant -Insurance Company strongly opposed the application by submitting that the appeal is filed by the Insurance Company on two grounds namely the Tribunal has awarded excessive compensation and that there was contributory negligence. He also pointed out that the learned Tribunal did not consider the aspect that despite producing the documentary evidence of the deceased, no efforts were taken by the claimants to prove the contents of

the same. He also submitted that there was also breach of policy condition.

3. However on going through the impugned judgment and award, it appears that the learned Tribunal has already paid the contributory negligence to the extent of 50% each. Moreover, the determination of the compensation amount also appears that in consonance with the observations made by Hon'ble Apex Court in the case of *Pranay Sethi*.

4. The learned counsel for the applicants pointed out that the learned Tribunal wrongly deducted the amount of Rs. 10,00,000/- which the applicant - wife had received on account of Personal Accidental Insurance Policy of the deceased. However, that will be a part of the merit. At this juncture, I find it appropriate allow the applicants to withdraw the entire compensation amount which has been deposited by the appellant - Insurance Company as per the same apportionment as done by the learned Tribunal along with the accrued interest thereon till date on usual undertaking to the satisfaction of learned Registrar (Judicial) of this Court that in case the appellant - Insurance Company succeeds in the appeal, they shall re-deposit the aforesaid amount forthwith.

5. The applications are accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

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shp/-