

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

31 CIVIL APPLICATION NO.14654 OF 2022
IN FAST/19614/2022

KESHARABAI PRAKASH HANDE AND 2 OTHERS
VERSUS
NEW INDIA INSURANCE COMPANY AND 1 OTHER

...
Advocate for Applicants : Ms.Varsha Virbhadrade Sundale
Advocate for Respondent No.2 : Mr.A.S.Usmanpurkar
...

...
CORAM : S. G. DIGE, J.

DATE : 17th October, 2022

PER COURT :-

1. Heard learned counsel for the applicants and learned counsel for respondent No.2.

2. Learned counsel for the applicants submits that the deceased was Karta of applicants' family. Applicant No.1 is widow of the deceased and applicant Nos.2 and 3 are children of the deceased and they are taking education. After the death of the deceased, applicants have no source of income. They require the amount for education of applicant Nos.2 and 3 as well as for their daily expenses. Hence, requested to allow the application.

3. Learned counsel for respondent No.2 vehemently objected to allow the application on the ground that death of the deceased was caused due to heart-attack, so it cannot be considered as death due to stress of work. Learned counsel for respondent No.2 further submits that the applicants failed to prove relationship of employee and employer. At the time of death, the deceased was not holding effective and valid driving licence. If respondent No.2 succeeds in the appeal, it would be difficult for respondent No.2 to recover the amount from the applicants. Hence, requested to dismiss the application.

4. I have heard both the learned counsel. The deceased was Karta of applicants' family. Applicants need the amount for their daily expenses and education of applicant Nos.2 and 3. Admittedly, accident was occurred when the deceased was driving the vehicle of respondent No.1. Another ground raised by the learned counsel for respondent No.2 can be considered at the time of final hearing of the appeal. The Tribunal has considered all the aspects and has fastened the liability on both the respondents. Hence, I pass the following order :-

ORDER

- (i) Application is allowed.
- (ii) Applicants are permitted to withdraw 40% amount alongwith accrued interest thereon on furnishing undertaking.
- (iii) Application is disposed of.
- (iv) Call Record and Proceedings.

(S. G. DIGE)
JUDGE

SPT