

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

940 CIVIL APPLICATION NO.16604 OF 2022
IN FA/2149/2022 WITH CA/12183/2022 IN FA/2149/2022

PRIYA RAHUL GAIKWAD AND ORS
VERSUS
MAHADEV SHRIMANT GARAD AND ANR

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Advocate for Applicants : Mr. Patel Fayaz K.
Advocate for Respondent No.2 : Mr. S. R. Bodade

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CORAM : SANDIPKUMAR C. MORE, J.
DATED : 13/12/2022.

P. C. :

IN CIVIL APPLICATION NO.16604 OF 2022 :

1. Heard rival submissions.
2. The applicants are seeking withdrawal of the entire amount of compensation, which has been deposited by the insurance company alongwith the interest accrued thereon.
3. The learned counsel for the insurance company opposed the application on the ground that two vehicles were involved in the accident and for the case of contributory negligence, he also submits that the deceased being the pillion rider was not at all third party as observed in many judgments of the Hon'ble Apex Court. He further submits that at the most 50% of the compensation amount can be permitted to be withdrawn.
4. On the contrary, the learned counsel for the applicants submits that in another motor accident claim in respect of same accident the claimant therein, who was riding on another

motorcycle, the present insurance company has satisfied the award against the present offending motorcycle.

5. It appears that the insurance company has also challenged the impugned award on the ground of grant of excessive compensation. Therefore, considering all these aspects, I am of the opinion that the applicant Nos.1, 4 and 5 can be permitted to withdraw their shares as decided by the learned Tribunal alongwith accrued interest thereon till date on usual undertaking to the satisfaction of the Registrar (Judicial) of this court. The balance amount owing to the shares of applicant Nos.2 & 3 be kept in FDR in any nationalized bank till final disposal of the appeal. The civil application is accordingly disposed of.

IN CIVIL APPLICATION NO.12183 OF 2022 :

1. Since the appellant insurance company has deposited entire amount of compensation, the stay application is made absolute in terms of prayer clause-B and accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)