

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

**917 CIVIL APPLICATION NO.1692 OF 2022
IN
FAST/35535/2015
KALAVATIBAI BABURAO MAGARE AND ANOTHER
VERSUS
SURESH BABURAO PAWAR AND ANOTHER**

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Advocate for Applicants : Mr.Sandanshiv M.B.
Advocate for Respondent No. 1 : Mr. Sandeep R. Sapkal
Advocate for Respondent No. 2 : Ambohre M. M.

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**CORAM : VINAY JOSHI, J.
DATE : 3rd MARCH 2022.**

PER COURT :

1. The claimants are seeking for withdrawal of further 50% amount of compensation, which has been deposited by the Insurance Company in this Court. It is their contention that the Tribunal has awarded total compensation to the tune of Rs. 8,33,588/- along with future interest. Though the applicants were permitted to withdrawn 50% amount, however, on medical emergency of applicant No. 2 further withdrawal is sought. In support of said contention, a certificate issued by the Medical Officer dated 12.10.2021 is produced on record.

3. Learned counsel appearing for the Insurance Company objected this application by contending that already the claimants have withdrawn 50% amount. Secondly, it is submitted that the defence of the Insurance Company was of contributory negligence. It

is argued that the deceased motorcycle rider himself was negligent, who gave dash to a truck from behind. Moreover, he also disputed the quantum of the compensation by submitting that the deceased was pensioner.

4. Perusal of impugned judgment, prima-facie indicates that the insurance company though took such a defence, it has not examined any witness to establish the plea raised in the written statement. The Tribunal has observed in paragraph No. 10 of the judgment that a specific defence of contributory negligence has not been raised in the written statement.

5. Having regard to the said fact and the medical emergency shown by the applicants-claimants, the applicants are permitted to withdraw 25% of the remaining amount (equal share to both) on usual undertaking to the satisfaction of the registrar (Judicial) of this Court.

6. There shall be a clause in the undertaking that in case of reversal of any modification of the impugned judgment, the claimants-applicants would re-deposit the entire withdrawn compensation amount within eight weeks from the order.

7. Application is disposed of.

(VINAY JOSHI, J.)