**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**NAGPUR BENCH : NAGPUR**

**CIVIL APPLICATION (CAF) NO. 907 OF 2022**
**IN**
**FIRST APPEAL NO. 1206 OF 2019**

Kushal Auto Pvt.Ltd., thr. Its Director
..vs..
Trushal @ Khusal Dilip Patankar (Minor), Dead, thr. His proposed legal heirs 1A. Shri Dilip Ganpat Patankar and ors.

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| Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders | Court's or Judge's orders |
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Shri T.D. Mandlekar, Advocate for the appellant.
Shri Md. Manzar Anis Advocate for respondent nos. 1(A) and 1(B).
Shri M.N. Ali, Advocate for respondent nos. 2 and 3(a) 3(b)
Shri A.C. Chaphale, Advocate for respondent no. 4.

**CORAM : M.S. KARNIK, J.**
**DATED : 28/04/2022.**

Heard.

2. This is an application made by the claimants for withdrawal of the amount of Rs.42,01,910/- (Rupees Forty Two Lakhs One Thousand Nine Hundred and Ten only) deposited on 26.10.2021 by the respondent no. 4 (United India Insurance Company Limited)

3. By a detailed order dated 15.09.2021, this Court had directed respondent no. 4 – Insurance Company to deposit the entire decretal amount with interest in this Court, which has been deposited.

4. In paragraph 9, this Court recorded that, even if the Court ultimately does not agree to the claim in the appeal of the insured, can always modify the Decree to the extent of ordering pay and recovery. This course was followed as the Insurance Company was absolved of the liability to pay the compensation amount. Now an application has been filed for

withdrawal of the amount by the claimants. In paragraphs 2 and 3 of the application the reasons have been set out for withdrawal by the claimants which reads thus :

> *"2. It is submitted that, the petitioner had preferred the aforesaid petition on account of permanent disability of 100% suffered by the petitioner due to the grievous injury arising out of the accident. The petitioner Trushal @ Khusal s/o Dilip Patankar was hospitalized at various life saving private hospitals including KRIMS Hospital, Nagpur in I.C.U. for several months and as such, the petitioner constrained to pay huge amount more than Rs.10,00,000/- towards the medical treatment and hospitalization.*
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> *3. The parents of the original petitioner are the poor persons and as such, they had arranged the aforesaid amount by taking hand loans of Rs.10,00,000/- from their closed relatives in the year 2012, which is yet to be repaid. The persons who had given the hand loans are repeatedly demanding their amount, but the parents of the petitioner could not return the same till today. That during the trial of the present appeal the original petitioner Trushal @ Khusal died on 28.10.2019 due to the injuries suffered in the accident."*

5. The application is opposed by the learned Counsel appearing on behalf of the appellant as well as the Insurance Company. Learned Counsel for the respondent no. 4 Insurance Company submitted that even if this Court is to allow the application, still the withdrawal will have to be guided by the decision of this Court in case of ***National Insurance Company Limited vs. Jayshri & ors. IV (2014) ACC 967 (Bom.)***

6. I am satisfied for the reasons stated in the application that 75% of the amount deposited with the accrued interest should be allowed to be withdrawn. The application is accordingly allowed on the following terms.

(a) Th claimants are permitted to withdraw 75% of the amount deposited including accrued interest.

(b) The appellant to furnish the solvent surety to the satisfaction of the Registrar (Judicial) in respect of this amount within the period of two weeks from today.

(c) In case the solvent surety is not given, still the amount shall be released in favour of the claimants, but in that case it is open for the respondent no. 4 to proceed against the appellant for recovery of this amount.

7. The application is partly allowed and disposed of.

**JUDGE**

*Trupti*