

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

145 CIVIL APPLICATION NO.5993 OF 2023
IN FAST/764/2023 WITH CA/1180/2023 IN FAST/764/2023 WITH
CA/1181/2023 IN FAST/764/2023

VIJAYA TEJUDAS RATHOD AND ORS
VERSUS
THE NEW INDIA ASSURANCE CO. LTD AND ANR

...
Advocate for Applicants : Mr. S.C. Swami
Advocate for Respondent 1 : Mr. A.S. Usmanpurkar

...
CORAM : ARUN R. PEDNEKER, J.
DATED : 25/09/2023

PER COURT :

1. The present appeal is filed by the Insurance Company on the ground of non involvement of the insured vehicle. The deceased was the Assistant Teacher in Government School. The present application is filed by the widow, children and parents of the deceased. The Tribunal in para Nos. 11 and 12 has held as under :-

"11. The record more particularly the statements of witnesses reveals that neither of the witnesses examined by the Investigating Officer was having personal information about the registration of the number of the offending vehicle and every witnesses received this information from some other person. Therefore, the statements of these witnesses are not believable in respect of the registration number of the offending vehicle.

12. The investigation is based upon the report Exh. 45 and supplementary statement of informant Raju. After necessary investigation the Investigation Officer concluded that the offending vehicle i.e. Jeep bearing No. MH-24-F-1402 was involved in the accident and accordingly submitted the charge sheet Exh. 44. During investigation the Investigation Officer made necessary investigation regarding place of incident and prepared spot panchanama Exh.46 and seized offending vehicle bearing No. MH-24-F-1402. In addition, the Regional Transport Officer has made

inspection of the offending vehicle and has submitted accident report Form Exh. 50. As per the accident report from headlight and right front indicator of the offending vehicle were broken and the guard was bent.”

2. The Tribunal has held that the chargesheet is already filed against the driver of offending vehicle. The Tribunal has concluded that on inspection of the vehicle report was submitted and insured vehicle was involved in the accident. In view of the same, the applicants are permitted to withdraw 50% of the amount deposited in this Court along with the interest accrued thereon on usual undertaking to the satisfaction of the Registrar (Judicial) of this Court. The wife and parents of the deceased are directed to give undertaking that in the event, they fail in the appeal, they would deposit the amount in this Court which they received on usual undertaking. The application for withdrawal of amount is accordingly disposed of.

3. Since the amount is deposited in this Court, stay granted earlier is confirmed. Stay application is disposed of.

4. The delay of 9 days is caused in filing the first appeal. For the reasons stated in the application, the delay of 9 days caused in filing the appeal is condoned. The application for condonation of delay is allowed and disposed of.

5. Appeal is **admitted**.

6. On admission, the learned counsel Mr. S.C. Swami waives service of notice for claimants.

7. Call record and proceedings.

[ARUN R. PEDNEKER J.]

ssc/