

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO.3436 OF 2023
IN FAST/17283/2022**

CHANCHALABAI GOPALRAO SHINDE AND OTHERS
VERSUS
MEGMA HOUSE 24 PARK STREET KOLKATA 700016 WEST
BENGAL THROUGH ITS LEGAL OFFICER

...

Mr. V. B. Deshmukh, Advocate for the Applicants.

Mr. S. S. Patil h/f Mr. R. H. Dahat, Advocate for Respondent No.1.

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 11th AUGUST, 2023.

PER COURT:-

1. By this application, the applicants/original claimants are seeking permission to withdraw the amount deposited by the appellant/Insurance Company in pursuance of the award passed by the Tribunal.

2. The learned Advocate appearing for the applicants submits that the Tribunal on assessment of the evidence, recorded a findings that the accident occurred due to rash and negligent driving on the part of the Tractor driver. Based on the evidence regarding the income of the deceased and the dependents of the claimant, the compensation has been assessed. He would submit that the applicants are waiting for just compensation since long. Hence, he requests for grant of permission to withdraw the amount.

3. Mr. Patil, learned Advocate appearing for the respondent/Insurance Company vehemently submits that this is a

case of false involvement of the insured vehicle. He would urge that the accident occurred on 14.03.2014. On the basis of the information given by one Dhanraj, the offence was registered against the driver of the Tractor. The registration number of the Tractor was not mentioned. The description of Tractor is given only as 'Sonalika'. He would submit that no evidence is adduced by the claimants to prove that the insured Tractor was offending vehicle. According to him, the claimants have failed to discharge primary burden and, therefore, award passed by the Tribunal is assailed in appeal.

4. Having considered the submissions advanced, it is apparent that the Tribunal on the basis of the police papers, particularly charge-sheet observed that the involvement of the Tractor has been established after due investigation. Particulars of the Tractor are referred in the charge-sheet. There is no evidence to show collusive claim has been filed by the claimants and owner of the vehicle. *Prima facie*, findings recorded by the Tribunal appears to be just and proper. However, considering the grounds of appeal and contentions raised on behalf of Insurance Company, arguable case is made out in appeal. In that view of the matter, the applicants can be permitted to withdraw partial amount subject to certain condition. Hence, the following order:-

ORDER

a. The applicants are permitted to withdraw 50% of the compensation amount deposited by the Insurance Company subject to furnishing of usual undertaking to the satisfaction of the Registrar (Judicial) of this Court.

- b. The balance amount be kept in Fixed Deposit in any Nationalized Bank initially for a period of one year with renewal clause.
- c. Civil Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2023