

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

28 CIVIL APPLICATION NO. 8717 OF 2023
IN FIRST APPEAL (ST) NO. 6928 OF 2023
WITH CA/2823/2023 IN FAST/6928/2023
WITH CA/2825/2023 IN FAST/6928/2023

DURGA DNAYNESHWAR KAMBALE AND OTHERS
VERSUS
UNITED INDIA INSURANCE COMPANY THROUGH
DIVISIONAL MANAGER AND OTHERS

...
Mr. S.S. Dargad – Advocate for Applicants
Mr. S.R. Bagal – Advocate for Respondent No.1
....

CORAM : SANDIPKUMAR C. MORE, J.
DATE : 17th July, 2023

PER COURT :

CIVIL APPLICATION NO. 8717 OF 2023

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 strongly opposed the application on the ground that, the learned Tribunal has granted exorbitant amount of

compensation and there was also contributory negligence on the part of deceased since it was head on collision.

4. However, it seems that the learned Tribunal has observed the evidence led by the driver of the offending truck and found that, the dash between motorcycle and truck was on the driver side of truck. As such, it cannot be treated as head on collision. Further, from the assessment of the compensation as done by the learned Tribunal, it appears that proper multiplier has been applied to the income of the deceased. However, considering the submissions made on behalf of the appellant – Insurance Company that, the deceased while overtaking one car in front of him collided with the truck, the applicants are permitted to 75% of the deposited amount of compensation alongwith the proportionate interest accrued thereon till date as per the apportionment done by the learned Tribunal, on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court.

5. The remaining amount be kept in F.D.R. in any

nationalized Bank on yearly renewal basis till final disposal of this appeal.

6. The civil application is accordingly disposed of.

CIVIL APPLICATION NO. 2823 OF 2023

7. The appellant – Insurance Company is seeking condonation of delay on 6 days in filing appeal. In view of short period of delay of 6 days, it stands condoned.

8. The appeal be placed for admission after removal of office objections, if any.

9. The application is accordingly disposed of.

CIVIL APPLICATION NO. 2825 OF 2023

10. Since the appellant – Insurance Company has deposited entire amount of compensation alongwith the interest, the application is made absolute in terms of prayer clause 'B' and disposed of.

**[SANDIPKUMAR C. MORE]
JUDGE**