

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

23 CIVIL APPLICATION NO.12004 OF 2023
IN FA/1131/2023 WITH CA/3571/2023 IN FA/1131/2023

GAJANAN SHIVAJI PATIL AND ORS
VERSUS
THE ORIENTAL INSURANCE CO.LTD AHMEDNAGAR THROUGH THE BRANCH
MANAGER, OSMANABAD AND ORS

...
Advocate for Applicants : Mr. S.B. Choudhari
Advocate for Respondent 1 : Mr. D.P. Deshpande
...

CORAM : ARUN R. PEDNEKER, J.
DATED : 03/10/2023

PER COURT :

1. The present first appeal is filed by the Insurance Company on the ground of non involvement of the insured vehicle in the accident. The appellant has deposited the claim amount of Rs.19,86,661/-.
2. The learned counsel for the Insurance Company submits that the bus driver who is witness of M.S.R.T.C. has given details of the insured vehicle. The deceased was travelling in the M.S.R.T.C. bus. On the basis of evidence available on record, the Tribunal has observed in para 16 of the judgment, which is as under :-

"16. The respondent no. 2 has not filed any written statement and not denied the involvement of offending truck in the accident. The police has collected R.C. Book of offending truck vide Exh. 48 and the driving licence of truck driver Parmeshwar at Exh. 49. The respondent no. 2 and 3 have not explained how, R.C. Book (Exh.48) and driving licence (Exh.49) seized by police while investigation. They have also not challenged reregistration of crime against the truck driver and seizure of the offending truck by police, in connection with the accident."

3. The Tribunal has recorded the findings thereafter that the insured vehicle was involved in the accident. In view of the same, the applicant No.

1 is permitted to withdraw 50% of the amount deposited in this Court along with the proportionate interest accrued thereon till date on furnishing usual undertaking to the satisfaction of the Registrar Judicial of this Court. The remaining amount be deposited in F.D.R. in any nationalized bank on yearly renewal basis till final disposal of these appeals. Civil Application filed for withdrawal of amount is disposed of.

4. Since the appellant Insurance Company has deposited amount of compensation as directed by this Court, ad-interim stay granted earlier is confirmed. Stay application is disposed of.

8. Appeal is **admitted**.

9. On admission, Mr. S.B. Choudhari, learned counsel waives service of notice for respondent Nos. 1 to 3.

10. Call R. & P.

[ARUN R. PEDNEKER J.]

ssc/