

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

**CIVIL APPLICATION NO. 6574 OF 2021
IN
FIRST APPEAL (ST) NO.740 OF 2020**

**SHOBHABAI BHARAT KAKDE AND ORS.
VERSUS
NATIONAL INSURANCE CO. LTD. THR ITS LOCAL OFFICE AT JALNA
AND ORS.**

...
Advocate for Applicants : Mr. R. V. Gore
Advocate for Respondent No.1: Mr. A. S. Usmanpurkar

...
CORAM : S. G. CHAPALGAONKAR, J.

DATE : 19.08.2023

PER COURT :

1. By this application, the applicants / original claimants are seeking permission to withdraw the amount deposited by the respondent - insurance company in pursuance of the award passed by the Motor Accident Claims Tribunal, Jalna, in Motor Accident Claim Petition No.84/2016.
- 2 Mr. Gore, learned Advocate appearing for the applicants would submit that the bread-earner of the family lost his life in motor vehicle accident. The applicants are litigating for getting just compensation. They were totally dependent on the earning of the deceased. The Tribunal, after considering the evidence tendered into service, passed an award of Rs.11,12,500/-. The present appeal is filed by the insurer. It may take its own time. In this background, he seeks permission to withdraw the amount.

- 3 Per contra, Mr. Usmanpurkar, learned Advocate appearing for the respondent - insurance company vehemently opposes the prayer. He submits that there is an inordinate delay in lodging the FIR. The insured motorcycle was not found on the spot. It has been subsequently implanted. The claim is collusive. He would further point out that in spite of specific defence of the insurance company, the Tribunal has not deliberated on the issue and casually dealt with the vital issue. He urges to fix the matter for final hearing instead of showing indulgence in the present application. Apparently, the award is passed in favour of the claimants recording the findings that the accident occurred due to involvement of the vehicle. Although the appeal is pending since 2020, service of notice to the respondents is not complete. It would be, therefore, difficult to place the matter for final hearing.
4. Considering the fact that the Tribunal has recorded finding in favour of the claimants and they have lost the bread-earner, it would be appropriate to permit partial withdrawal of the amount subject to some conditions. Hence, the following order:

ORDER

- a) Civil Application is partly allowed.
- b) The applicants are permitted to withdraw 50% amount deposited by the insurance company along with accrued interest thereon subject to furnishing of solvent surety / security as well as undertaking to the satisfaction of the Registrar [Judicial] of this Court that the amount shall be refunded, if so directed by the Court, within the period of eight weeks from the date of such order.

- c) The balance amount be kept in fixed deposit in any Nationalized Bank initially for a period of one year with renewal clause.
- d) Civil Application is disposed of accordingly.

[S. G. CHAPALGAONKAR]
JUDGE

Sameer