

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

**CIVIL APPLICATION NO.4866 OF 2023
IN FAST/33365/2022 WITH CA/17090/2022 IN FAST/33365/2022
WITH CA/17091/2022 IN FAST/33365/2022**

SUBHADRA ANNASAHEB SONAWANE AND ORS ... Applicants

VERSUS

THE UNITED INDIA INSURANCE COMPANY
LIMITED AND OTHERS ... Respondents

...

Advocate for Applicants : Mr. A. S. Gandhi
Advocate for Respondent no.1: Mr. S. R. Bagal
Advocate for Respondent Nos.1 to 4: Mr. J. R. Shah

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 11.07.2023

PER COURT :

A. Order in Application for Withdrawal :

1. Heard the learned Advocates appearing for the respective parties.

2. Mr. Gandhi, learned Advocate appearing for the applicants submits that the Tribunal passed an award in favour of the claimants / applicants which includes the amount of Rs.9,60,000/- towards medical expenses. He would further submit that the Tribunal after assessment of evidence on record passed just and fair award. Hence, he urge to permit withdrawal of the entire amount.

3. Per contra, Mr. Bagal, learned Advocate appearing for appellant – insurance company submits that the deceased was more than 65 years of age and the claim is raised on the basis of agricultural income of the deceased. He would further submit that there is huge delay in lodging the FIR which is not explained. Therefore, the issue of involvement of vehicle is also raised in appeal.

4. Having considered the respective submissions and reasoning as adopted by the Tribunal, prima facie, finding recorded shows that the accident occurred due to involvement of the insured vehicle. Further, the compensation amount includes medical expenses of Rs.9,60,000/-. In that view of the matter, the case is made out to permit withdrawal of the amount. Hence, the following order:

ORDER

- (i) Application is allowed.
- (ii) The applicants are permitted to withdraw 70% of the amount deposited by the appellant – insurance company subject to usual undertaking to be furnished to the satisfaction of Registrar (Judicial) of this Court.
- (iii) The disbursement of the amount shall be in the proportion of the apportionment appearing in Clause No.4 of the impugned order.
- (iv) Application is disposed of accordingly.

B. Order in Application for Delay :

1. By this application, the applicant seeks to condone the delay of 92 days caused in filing the appeal.
2. Mr. Bagal, learned Advocate appearing for the applicant invites attention of this Court towards the reasoning given in the application and submits that, the delay is occurred on account of administrative reasons.
3. Mr. Gandhi, learned Advocate appearing for the respondents opposes the prayer.
4. Considering the submissions advanced and the reasoning as stated in the application, the sufficient case is made out to condone the delay. Hence, the following order:

ORDER

- (i) The Application is allowed.
- (ii) The delay of 92 days caused in filing the appeal is condoned.
- (iii) Appeal be registered.
- (iv) Application is disposed of accordingly.

C. Order in Application for Stay :

1. By this application, the applicant – insurance company seeks stay to the execution of the award which is a subject matter of appeal.

2. The applicant – insurance company has deposited the entire amount of compensation as per the award passed by the Tribunal.

3. In that view of the matter, there is no impediment in allowing the application. Hence, the following order:

ORDER

(i) Application is allowed in terms of prayer clause - ‘B’ and the same is disposed of accordingly.

D. Order in Appeal :

1. On registration of appeal, issue notice to the respondents.
2. Mr. Gandhi, learned Advocate waives notice on behalf of respondent nos.1 to 4 and Mr. J. R. Shah, learned Advocate waives notice on behalf of respondent nos.5 and 6.
3. Call for Record and Proceedings.
4. Place the matter for admission on 8th August, 2023.

[S. G. CHAPALGAONKAR, J.]