

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

983 CIVIL APPLICATION NO.5780 OF 2023
IN FA/1458/2022 WITH CA/9781/2022 IN FA/1458/2022 WITH
CA/10215/2023 IN FA/1458/2022

SANGITA SAVAKAR JARE (DIED) VIKAS SAVAKAR JARE AND ANR
VERSUS
NATIONAL INSURANCE CO. LTD., AHMEDNAGAR AND ORS

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Advocate for Applicants : Mr. Dattatraya Rambhau Markad
Adv. for Respondent No.1: Mr. V.N. Upadhye.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 18TH AUGUST, 2023

ORDER :-

in C.A. NO. 10215 OF 2023

For the reasons stated in the application, the application is allowed. The applicant is permitted to publish notice in daily Punyanagari, Mumbai edition and submit copy of the publication on record within a period of 8 weeks.

C.A. NO. 5780

By this application the applicants seek permission to withdraw the amount deposited by the Insurance Company in terms of the award passed by the Tribunal under the provisions of the Motor Vehicles Act.

2. The learned advocate for the applicant submits that the applicants are litigating for compensation of death of bread earner. Since 2018, they are facing difficulties in day to day life for want of finances.

3 The learned advocate for the applicant submits that the Tribunal after considering the defence of the Insurance Comany recorded a finding that the accident occurred due to the negligence on the part of driver of the insured vehicle. In that view of the matter, the pplicant may be permitted to withdraw the amount.

4. Mr. Upadhye, learned counsel for the insurance company vehemently opposed the prayer. He would submit that there is a delay of about 3 months in lodging the FIR. The insurance company has taken specific defence of false involvement of the vehicle. He would further submit that the initial burden to prove that the accident occurred due to the insured vehicle was upon the claimants, which they hve failed to discharge.

5. Considering the arguments advanced and the reasons as recorded by the Tribunal, it appers that, prima facie finding is recorded by the Tribunal on the basis of material placed during the course of trial. In this view of the matter, ends of justice would be met by permitting the applicants to withdraw 25% of the compensation amount deposited by the Insurance Company subject to furnishing undertaking to the satisfaction of the Registrar (Judicial) of this Court. Hence, the following order :-

: O R D E R :

[I] The application is partly allowed.

[II] The applicants are permitted to withdraw 25% of compensation deposited by the Insurance Company subject to furnishing the usual undertaking to the satisfaction of the Registrar (Judicial) of this

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court.

Civil application is disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-