

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

929 CIVIL APPLICATION NO. 7105 OF 2023
IN FIRST APPEAL NO. 560 OF 2023

ARCHANA W/O SANJAY SHINDE AND OTHERS
VERSUS
THE NEW INDIA ASSURANCE COMPANY LTD THROUGH ITS
BRANCH MANAGER AND OTHERS

...
Mr. Fayaz K. Patel – Advocate for Applicants
Mr. D.P. Deshpande – Advocate for Respondent No.1
....

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 27th July, 2023

PER COURT :

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 respondent No.1 – Insurance Company strongly opposed the application on the ground of non involvement of offending jeep and also collusion between owner of the said jeep and claimants.

4. Learned Counsel for the appellant – Insurance Company submits that, the FIR was against unknown vehicle and after about five months the vehicle was shown traced in the statement of eye-witness – Mr. Chaugule who himself had gone to the police. He further pointed out that, as per the evidence of this witness before the learned Tribunal the accident had taken place when the deceased was trying to overtake the truck in front of him and at the relevant time the offending jeep gave dash to him. According to the learned Counsel for the Insurance Company the spot of accident as per the spot panchanama is shown at the extreme left side of the road and therefore the aforesaid testimony of eye-witness cannot be believed. However, the Insurance Company has not examined any witness. It also did not examined the Investigating Officer or the driver or owner of the offending jeep to ascertain whether the said jeep was involved in the accident. Moreover, the learned Tribunal appears to have deducted certain part of compensation towards negligence of deceased himself.

5. The applicant Nos.2 and 3 are still minors and therefore, their shares of compensation cannot be released. However,

considering the aforesaid position the applicant No. 1 is permitted to withdraw her entire share as determined by the learned Tribunal alongwith the proportionate interest accrued thereon till date on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court. Likewise the respondent Nos.4 and 5 are also permitted to withdraw 75% each from their respective shares in the compensation alongwith the proportionate interest accrued thereon till date on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court.

6. The remaining amount be kept in F.D.R. in any nationalized Bank on yearly renewal basis till final disposal of this appeal.

7. The civil application is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE