

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

**CIVIL APPLICATION NO.7135 OF 2023
IN FA/3650/2022**

**HAUSABAI MADHAV KAMBLE
VERSUS
THE ORIENTAL INSURANCE CO LTD**

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Mr. Mohit R. Deshmukh, Advocate for the Applicant.
Mr. D. P. Deshpande, Advocate for Respondent No.1.

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 04th AUGUST, 2023.

PER COURT:-

1. By this application, the applicant seeks to withdraw the amount of compensation deposited by the respondent-Insurance Company in terms of the award passed by the Tribunal in MACP No.11/2016.

2. The contention of the claimant is that she lost her son on account of accident. The Tribunal after evaluation of the evidence passed the award holding that the rider of the insured vehicle was responsible for accident.

3. Mr. Deshpande, learned Advocate appearing for the respondent-Insurance Company opposes the prayer contending that there is issue of involvement of the insured vehicle, since there is delay of more than 10 days in lodging FIR. He would further submit that owner/rider of motorcycle was not holding license. The Tribunal has recorded such finding, however, the

award in the nature of pay and recovery is passed, which is inconsistent with the said legal position.

4. Having considered the submission advanced, it is apparent that the deceased lost his life in the motor vehicle accident. Although, it is contended on behalf of the appellant that there is issue of false involvement of the vehicle, no such defence appears to have been raised in the written statement. Even, no evidence is brought on record in support of such contention. The aspect regarding breach of policy owing absence of the license is concerned, the Tribunal has accepted such defence and passed award in the nature of pay and recovery. In that view of the matter, it would be equitable to permit withdrawal of some amount to the applicant with certain conditions. Hence, the following order:

ORDER

- a. Civil Application is partly allowed.
- b. The applicant is permitted to withdraw the amount of Rs.15,00,000/- (Rs. Fifteen Lakhs Only) on furnishing undertaking to the satisfaction of the Registrar (Judicial) of this Court.
- c. Balance of the amount be kept in Fixed Deposit with the Nationalized Bank initially for a period of one year with renewal clause.
- d. Place the matter for further consideration on 20.09.2023. Parties are put to the notice that if time permits, the appeal will be heard finally at the stage of admission.

e. Civil Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/August-2023