IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

43 CIVIL APPLICATION NO.12843 OF 2023
IN FAST/18764/2023 WITH CA/8066/2023 IN FAST/18764/2023 WITH CA/8067/2023 IN FAST/18764/2023

CHANDRAKALA WD/O BHIMRAJ DARANDALE AND ORS
VERSUS
BALU MURLIDHAR WARKAD AND ORS

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Advocate for Applicants : Mr. Dhakane Rajendra Babaji
Advocate for Respondent No.3 : Mr. A. S. Usmanpurkar

...

**CORAM : ARUN R. PEDNEKER, J.**
**DATE : 23/10/2023**

**PER COURT :**

1. Heard the learned Advocate appearing for both the parties.

2. The present appeal is filed by the Insurance Company against the order of the Tribunal granting compensation to the claimants. The appeal is admitted on the ground of involvement of the insured vehicle in the accident. The primary submission of the Insurance Company is that the First Information Report is lodged after seven months and twenty-one days of the accident and that the Investigating Officer in his deposition has submitted that apart from the FIR and the statement of victim, there is no other evidence to indicate that the insured vehicle was involved in the accident. The Insurance Company after relying upon the statement of the witness PW 5 who in his cross

has stated that he was aware of the number of the vehicle and that he was with the victim for a long period before the demise.

3. Per contra, in the Civil Application No.12843 of 2023 filed for withdrawal of compensation amount deposed in this Court, the learned Advocate for the applicants submits that the Tribunal at paragraph No.26 of its Judgment has noticed that the deceased in the accident had sustained grievous injury and was admitted to the Shanishinganapur Hospital in unconscious condition. Thereafter he was shifted to Ruby Hospital, Pune but he was not in a condition give a statement as per certificate issued by the Medical Officer. After improvement of his health, at Shaneshwar Hospital the police with permission of the Medical Officer, recorded the statement of the deceased on 24/05/2015, in which the deceased stated that the alleged accident had taken place due to mistake of driver of tempo No.MH-17- K-5110, and accordingly the crime was registered. Thereafter, the victim expired on 03/06/2015.

4. The learned Advocate for the applicant submits that entire evidence as was possible tot he claimants was placed before the Tribunal, so also the vehicle owner was made party. However, the claim is not contested by the policy holder. He submits that there is no collusion between the owner of the vehicle and the claimants and

there is no relation between the applicant and the vehicle owner, and that there is no reason for the victim to indicate the particular tempo in the accident. He further submits that there is no contra evidence brought on record by the Insurance Company that the vehicle was not involved with the accident.

5. In view of the findings of the Tribunal that the insured vehicle was involved in the accident, claimant is permitted to withdraw 50% of the amount deposited in this Court along with the proportionate interest as of today on an usual undertaking tot he satisfaction of the Registrar by all the claimants.

6. With the above observation, the application for withdrawal of amount is disposed of.

7. Civil Application No.8066 of 2023 is filed for condonation of delay of 372 days caused in filing the appeal. For the reasons stated in the application, the said application is allowed and disposed of.

8. Civil Application No.8067 of 2023 is filed for stay. This Court vide order dated 11/08/2023 granted ad interim relief subject to deposit of entire amount of compensation along with the interest. The learned Advocate for the applicants submits that the amount has been deposited in this Court as per the directions of this Court. In view of the same, the Stay order passed by this Court dated

11/08/2023, is confirmed. The application filed for Stay stand disposed of.

9. The appeal is **admitted.**

10. After admission the learned Advocate Mr. R. B. Dhakne waives service of notice on behalf of original claimants/ respondents in appeal.

11. The Insurance Company is permitted to place on record copies of evidence of Pws.4 and 5. Copies of the same be given to the learned Advocate for original claimants.

12. Call for record and proceedings.

**( ARUN R. PEDNEKER, J. )**

*vj gawade/-.*