

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO.7669 OF 2023
IN FA/971/2022**

INDUBAI SAINATH BUDHEWAD AND ORS
VERSUS

THE NEW INDIA ASSURANCE COMPANY LTD THROUGH
ITS BRANCH MANAGER AND ANR

...

Mr. Avinash R. Borulkar, Advocate for the Applicants.

Mr. M. R. Deshmukh, Advocate for Respondent No.1.

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 31st JULY, 2023.

PER COURT:-

1. By this application, the applicants seek permission to withdraw the amount deposited by the appellant/Insurance Company in pursuance of the Award passed by the Tribunal in M.A.C.P. No.35/2016. The Tribunal on consideration of the evidence adduced by the claimants, passed an award of Rs.23,32,000/- in their favour. The appellant/Insurance Company deposited amount with the Registry of this Court.

2. Mr. Deshmukh, learned Advocate appearing for the respondent/Insurance Company submits that there is inordinate delay in lodging the F.I.R.. Initially, the accident report shows that the deceased died due to consumption of excessive liquor. There is no whisper of involvement of vehicle insured.

3. Mr. Borulkar, learned Advocate appearing for the applicants points out that the injuries in the postmortem report negates the contents in the Report and supports the contents in the FIR, which is favour of the Accidental Death involving insured vehicle.

4. Considering the rival submissions, it appears that the arguable grounds are made out in the appeal. However, at this stage the award is in favour of the claimants and the findings are recorded by the Tribunal to indicate that the deceased lost his life on account of accident involving insured vehicle. In that view of the matter, it would be appropriate to permit the applicants to withdraw some amount subject to certain condition. Hence, the following order:-

ORDER

- a. The applicant no.1/claimant no.1-Indubai Sainath Budhewad is permitted to withdraw Rs.5,00,000/- (Rs. Five Lakhs Only) out of the amount deposited by the Insurance Company, so also applicant no.4-Nilabai Madhavrao Budhewad is permitted to withdraw Rs.5,00,000/- (Rs. Five Lakhs Only) out of the amount deposited by the Insurance Company.
- b. The applicant nos.1 and 4 shall file undertaking to the satisfaction of the Registrar (Judicial) of this Court that in case the appeal is allowed, they shall refund the amount as directed by the Court within a period of eight weeks.
- c. After disbursement of the amount in the aforesaid terms, balance of amount be kept in Fixed Deposits in Nationalized Bank initially for a period of one year with renewal clause.
- d. Post the appeal for final hearing in a week commencing from 04.09.2023.
- e. Civil Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE