

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

CIVIL APPLICATION NO.11246 OF 2022

IN

FIRST APPEAL NO. 789 OF 2022

Manisha w/o Vivekanand Ped
and others

Applicants

versus

Universal Sompo General Insurance
Co. Ltd. and others

Respondents

...

Mr. Vikrant Valse, Advocate for the applicants.
Mr. Mohit R. Deshmukh, Advocate for respondent No.1.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 15.03.2022.

ORDER:-

1. The applicants are seeking permission to withdraw the entire compensation amount as deposited by respondent No.1 – Insurance Company, who has filed this appeal.

2. The learned Counsel for the Insurance Company strongly opposed the application on the ground that there are so many doubtful circumstances on record leading to non-involvement of the alleged offending vehicle i.e. truck bearing registration No. CG-08-AH-5941. The learned Counsel for the Insurance Company pointed out that all the police papers before filing the F.I.R. which is lodged after 15 days of the accident, indicated that some unknown vehicle had given dash

to the deceased. Some of them had also indicated that the deceased himself fell down from the motorcycle and got injured.

3. Admittedly, the F.I.R. has been lodged belatedly on 04.02.2019 i.e. after about 15 days from the date of the accident. Moreover, one Uddhav Shinde, who allegedly had seen the accident, has also not been examined by the applicants – claimants. However, the learned Tribunal has dealt in it's judgment the aspect of belated lodging of F.I.R. and thereafter granted compensation. Though there are certain doubtful circumstances on record, but the driver and owner of the offending truck, despite service, remained absent and the Insurance Company did not lead any evidence. Though the learned Counsel for the Insurance Company relied on various judgments wherein this Court and the Hon'ble Apex Court have refused the compensation awarded by learned Tribunal relying upon doubtful circumstances, but this is only an interim stage, and therefore, I am of the opinion that at this juncture certain amount can be given to the applicants.

4. Admittedly, applicant No.2 is still minor and therefore, no withdrawal in respect of his share of compensation can be permitted till he attains majority.

Therefore, applicant Nos.1, 3 and 4 only are permitted to withdraw 50% of the compensation amount from their respective shares as apportioned by the learned Tribunal alongwith the proportionate interest accrued thereon, till date by furnishing usual undertaking before the learned Registrar (Judicial) of this Court. The remaining amount be invested in F.D.R. in any Nationalized Bank on yearly renewal basis, till final disposal of this appeal. Liberty is granted to appellant No.2 to claim withdrawal of his share on attaining age of majority.

5. The application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)