

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

CIVIL APPLICATION NO.7818 OF 2023
IN FAST/25766/2022 WITH CA/14592/2022 IN FAST/25766/2022
WITH CA/14594/2022 IN FAST/25766/2022

SMT SONALI TUSHAR AHIRE AND ORS
VERSUS
MAGMA HDI GENERAL INSURANCE CO LTD AND ORS

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Advocate for Applicants : Mr. Vijay Bhalerao Patil
Adv. for Respondents: Mr. Swapnil S. Patil h/f. Mr. Dahat.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 10TH JULY, 2023

ORDER :-

IN APPLICATION FOR WITHDRAWAL (C.A. NO. 7818 OF 2023)

Heard.

By this application, the original claimants are seeking permission to withdraw the amount deposited by the appellant/insurance company.

Mr. Patil, learned advocate for the applicants fairly submits that the major portion of the compensation has been allotted to the minors and that amount may be kept in Fixed Deposit. However, claimant Nos. 1,4 and 5 may be permitted to withdraw the amount falling to their share.

Mr. Patil learned counsel for respondent would submit that the insurer has taken a specific plea of contributory negligence against

the deceased and the spot panchanama also depict negligence on the part of the deceased/driver of the car. Therefore, he would submit that the matter may be taken up for final hearing without entertaining the present application for withdrawal of the amount.

Having considered the submissions advanced by the learned advocates for the parties, it is apparent that the Tribunal on the basis of evidence adduced, recorded finding in favour of the claimant holding that the driver of the insured vehicle was responsible for accident. It would not be appropriate at this stage to comment on either aspect of the matter. However, in the fitness of things, the prayer of applicant Nos. 1,4 and 5 to withdraw the amount falling to their share deserves to be allowed. The applicant No.1 is permitted to withdraw an amount of Rs. 20,53,000/- alongwith interest accrued thereon. Applicant Nos 4 and 5 are permitted to withdraw Rs. 15 Lakhs each alongwith interest accrued thereon. The withdrawal shall be subject to furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court. Rest of the amount shall remain in Fixed Deposit with renewal clause till disposal of the appeal. However, there shall be liberty to the minor claimants to seek withdrawal of the amount, if such contingency arises.

IN CIVIL APPLICATION NO. 14592 OF 2022

The learned counsel for the appellant submits that notice of respondent No.6 returned unserved with endorsement, “not residing on the given address”. Mr. Patil, would also point out that even in the proceeding before the Tribunal, the respondent was served by way of paper publication and he may be permitted to adopt the same course.

The learned counsel appellant is permitted to serve the respondent No.6 by way of paper publication in the news paper having

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wide circulation in the area. Notice to respondent No.6 is made returnable on 21.8.2023. Publication be placed on record with the Registry of this Court, within four weeks thereafter.

Stand over to 21st August, 2023.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-