

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

**CIVIL APPLICATION NO.11421 OF 2023
IN
FIRST APPEAL NO.2319 OF 2023**

- 1) Sunita Wd/o Madhukar Hazare,
Age-48 years, Occu:Household,
R/o-Aapatgaon, Tq. And Dist-Aurangabad,
- 2) Ajay S/o Madhukar Hazare,
Age-25 years, Occu:Education,
R/o-As Above,
- 3) Abhijit S/o Madhukar Hazare,
Age-18 year, Occu:Education,
R/o-As Above,
- 4) Kailas S/o Devrao Hazare,
Age-55 years, Occu:Nil,
R/o-As Above.

**...APPLICANTS
(Ori. Claimants)**

VERSUS

- 1) Ramdas Ramnihar,
Age-Major, Occu:Driver,
Age-Major, Occu:Driver,
Samaullah Motor Park,
P.D. Mello Road, Wadi Bunder,
Mumbai-400009,
- 2) Vandana Ravindra Paratap Singh,
Age-Major, Occu:Business,
Owner of Trailer No.MH43 Y 2265,
As per Policy, R/o-Dahisar Mori Village,
Mumbra, Panvel Road, Darave,
Navi Mumbai-400706,

- 3) Ravindra Pratap Singh,
Age-Major, Occu:Business,
Owner of Trailer No.MH43 Y 2265,
As per Policy, R/o-Dahisar Mori Village,
Mumbra, Panvel Road, Darave,
Navi Mumbai-400706,
- 4) Bajaj Allianz General Insurance Co. Ltd.,
Through its Divisional Manager,
3rd Floor, ABC East, Plot No.D5/1,
Near Prozone Mall, Chikalthana MIDC,
Aurangabad.

...RESPONDENTS

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Mr. A.S. Usmanpurkar Advocate for Applicants.
None present for Respondent Nos.1 to 3.
Mr. Mohit R. Deshmukh Advocate for Respondent No.4.

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**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE OF RESERVING ORDER : 11th SEPTEMBER 2023

DATE OF PRONOUNCING ORDER : 29th SEPTEMBER 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed by the original claimants for permitting them to withdraw the amount deposited by respondent No.4 – Insurance Company in the First Appeal.

2. Heard learned Advocate Mr. Usmanpurkar appearing for the applicants – original claimants and learned Advocate Mr. Deshmukh appearing for respondent No.4 – Insurance Company.

3. It has been contended by the learned Advocate for the applicants that by order dated 15th June 2023 this Court had granted stay to the impugned Judgment and award, subject to deposit of Rs.40,00000/- (Rupees Forty Lakhs) and the said amount has been deposited. It was tried to be contended that the learned Tribunal had directed that original respondent Nos. 1 to 4 to pay compensation of Rs.85,92,978/- (inclusive of NFL amount) and therefore, it was prayed that the entire amount be allowed to be withdrawn.

4. Learned Advocate for the appellant – Insurance Company submitted that the amount has been deposited as per the order passed by this Court.

5. At the outset, we would like to say that the Insurance Company had pointed out that the income of the deceased that has been arrived at by the learned Tribunal is wrong and as per the Insurance Company there was no evidence at all regarding the income of the deceased, the calculation ought not to have

been on the basis of certain payments stating that milk supply was made by the deceased to the said supplier. It was also tried to be demonstrated that there is no loss in the live stock and the income would be still available from the said resource.

6. Taking into consideration the submissions that the amount of compensation that has been awarded by the learned Tribunal is on the higher side, the stay was granted subject to deposit of amount of Rs.40,00000/- (Rupees Forty Lakhs) and therefore, now there is no hurdle in allowing applicant Nos.1 to 3 to withdraw the entire amount, as the interest of the appellant is already protected.

7. With the aforesaid reasons, we allow applicant Nos.1 to 3 to withdraw the amount of Rs.40,00000/- (Rupees Forty Lakhs) with accrued interest, in equal share.

8. Application stands allowed and disposed of accordingly.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE