

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

921 CIVIL APPLICATION NO.6865 OF 2023
IN FAST/29302/2022 WITH CA/16210/2022 IN FAST/29302/2022
WITH CA/16211/2022 IN FAST/29302/2022

KALPANA NITIN KOCHURE AND ANOTHER
VERSUS
BHARTI AXA GENERAL INSURANCE CO.LTD AND OTHERS

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Mr. R.V. Gore, Advocate for the applicants.

Mr. Swapnil Patil, Advocate for respondent No.1.

Mr. S.V. Suryawanshi, Advocate for respondent No.2.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 08.06.2023.

ORDER:-

IN CIVIL APPLICATION NO. 6865 OF 2023 :

1. Heard rival submissions.
2. The applicants are seeking withdrawal of the entire amount of compensation alongwith the interest accrued thereon, which has been deposited by the Insurance Company. It appears that the original claimant Nos.3 and 4 who are the parents of thh deceased, have not filed this application, but only the widow and daughter of the deceased who are original claimant Nos.1 and 2 have filed this application. The applicant No.2 i.e. daughter of deceased is still minor and therefore, there is no question of granting any withdrawal in her favour till she attains majority. On the contrary, the impugned award indicates that the applicant No.1 has given share of around Rs. 26,00,000/- out of the total compensation around Rs. 42,00,000/-. Moreover, amount of Rs. 5,00,000/- has

already been directed from her share to be kept in F.D.R. As such, now the amount around Rs. 21,00,000/- alongwith the proportionate interest appears to be available for withdrawal.

3. The learned Counsel for the Insurance Company strongly opposed the application on the ground that the deceased himself was negligent since he gave dash to the parked insured vehicle from backside. He pointed out that the father of deceased who had lodged an F.I.R., had stated that the insured vehicle was parked beyond the margin of road. However, considering the fact that applicant No.1 is widow and short of funds to maintain applicant No.2 i.e. daughter of deceased, applicant No.1 is permitted to withdraw an amount of Rs. 20,00,000/- from her share without any interest at this juncture on usual undertaking to the satisfaction of the Registrar (Judicial) of this court. The remaining amount be kept FDR in any nationalized Bank on yearly renewal basis till final disposal of this appeal.

4. The civil application is accordingly disposed of.

IN CIVIL APPLICATION NO. 16210 OF 2022 :

1. The learned Counsel Mr. Gore, who is also appearing on behalf of respondent Nos.1 and 2, waives service for respondent Nos.3 and 4 who are the parents of deceased.

2. The appellant – Insurance Company is seeking condonation of delay of only 7 days. Considering the short period of

delay, the application is allowed and the delay of only 7 days stands condoned.

3. The appeal be placed for admission after removal of office objections, if any.

4. Application is accordingly disposed of.

IN CIVIL APPLICATION NO. 16211 OF 2022 :

. Since the applicant Insurance Company has deposited entire amount of compensation alongwith interest the application made absolute in terms of prayer clause (B) and disposed of.

(SANDIPKUMAR C. MORE, J.)