

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

931 CIVIL APPLICATION NO.12857 OF 2023
IN FAST/1739/2023 WITH CA/685/2023 IN FAST/1739/2023 WITH
CA/686/2023 IN FAST/1739/2023

MIRABAI POPAT LONARE
VERSUS
NEW INDIA ASSURANCE CO LTD

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Advocate for Applicant : Mr. A.S. Gandhi
Advocate for Respondent 1 : Mr. A.B. Gatne
Advocate for Respondent 2 : Mr. S.A. Nimbalkar h/f. Mr. P.P. Mandlik

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CORAM : ARUN R. PEDNEKER, J.
DATED : 26/10/2023

PER COURT :

1. Heard the learned counsel for the parties.
2. First appeal is filed by the Insurance Company, particularly, on the ground that insured vehicle was not involved in the accident. It is the contention of the appellant that accident occurred on 25.11.2019 and that the F.I.R. was registered on 28.11.2019 and as such, there is delay in registering the F.I.R. and that the vehicle is implanted to give insurance to the applicants.
3. The Tribunal has considered these contentions of the appellant/Insurance Company at para Nos. 16 and 17 and recorded finding in para 18 of the judgment, by relying upon the evidence of PW 2 and PW 3 that the insured vehicle was involved in the accident. This finding is assailed by the Insurance Company.
4. The first appeal is filed and ad-interim stay has been granted, subject to deposit of entire amount of compensation alongwith interest as was granted by the Tribunal and the said amount is deposited by the Insurance Company in this Court.

5. The present civil application is filed by the original claimants i.e. wife, three minor children and mother of the deceased, for withdrawal of amount deposited by the Insurance Company in this Court. In view of the above finding recorded by the Tribunal that the insured vehicle was involved in the accident and as the charge-sheet is filed in the matter, I deem it appropriate to permit the major applicants to withdraw 50% of the amount deposited in this Court in proportion to their share as directed by the Reference Court. At the moment, the minor applicants are also permitted to withdraw Rs.1,00,000/- (Rupees one lakh) each for the purpose of their education and other requirements. The major applicants shall file the undertaking to the satisfaction of the Registrar Judicial of this Court in respect of their share. In respect of amount of minors, their mother shall file undertaking to the satisfaction of the Registrar Judicial of this Court that in the event she loses in appeal, she would return the amount withdrawn. Civil Application filed for withdrawal of amount is disposed of accordingly.

6. Since the appellant/Insurance Company has deposited the amount of compensation as directed by this Court in this matter, the ad-interim stay granted earlier is confirmed. Stay application is disposed of.

7. Appeal is **admitted**.

8. On admission, the learned counsel Mr. A.S. Gandhi waives service of notice for original claimants and Mr. S.A. Nimbalkar waives service of notice for respondent No. 2.

9. Call R. & P.

[ARUN R. PEDNEKER J.]

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