

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

916 CIVIL APPLICATION NO.15607 OF 2022
IN
FIRST APPEAL NO.2136 OF 2022

- 1] Mina Mukesh Choudhari
Age: 27 years, Occupation : Housework.
- 2] Manvi Mukesh Choudhari
Age: 7 years, Occupation : Education
Minor hence through guardian
Applicant No. 1
- 3] Lotan Tulshiram Choudhari
[Deleted as expired]
- 4] Pramilabai Lotan Choudhari
Age: 60 years, Occupation : Housework.
- 5] Pravin Lotan Choudhari
Age: 40 years, Occupation : Handicapped

All Resident of : Santoshi Mata Temple,
Baherpura, Amalner, District Jalgaon.

..APPLICANTS
[Org. Claimants]

VERSUS

- 1] Bajaja Allianz General Insurance
Company Limited
Through the Manager,
Resident of : 1st Floor, Shri Ganesh Plaza,
Near Hotel Sandip, Kute Road,
Backside of Mahamarg Bus Stand,
Nashik.

2] Bhausahab Ananda Gangurde
Since deceased hence
Through Legal Representative

2-A. Kalpana Bhausahab Gangurde
Age: 45 years, Occupation : Service
Resident of : Krushna Flat No.103,
Ramchandra Colony, Dharmaji Place,
Mourya Nagari, Post – Manere,
Taluka Amarnath, District Ulhasnagar.

3] Vijaykumar Kalu Masule,
Age: 40 years, Occupation : Driver,
Resident of : Gotane,
Taluka and District Dhule.

4] Bhaskar Namdeo Suryawanshi
Age: 45, Occupation : Truck Owner,
Resident of : Fagne,
Taluka and District Dhule.

5] The Divisional Officer,
The Oriental Insurance Company Limited,
Resident of : Pshpanjali Market,
Infront of Rajkamal Talkies,
Dhule, District Dhule.

.. RESPONDENTS

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Mr.Mukul S. Kulkarni, Advocate for the applicants
Mr.M.R.Deshmukh, Advocate for the respondent no.1
Mr.B.K.Patil, Advocate for the respondent No.2A.

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CORAM : ARUN R. PEDNEKER, J.

DATE : 27.07.2023

P.C. :

1] Heard the learned counsel for the parties.

2] The appeal is filed on the ground of contributory negligence and limited challenge of grant of total compensation is involved in the present First Appeal. The Appellant – Insurance Company has deposited the amount in this Court.

3] On 31.03.2022, the Member, Motor Accident Claims Tribunal, Dhule has passed the following order in MACP No.83 of 2017 :

ORDER

1. Claim petition is hereby partly allowed with proportionate costs to the extent of respondent No. 1-A and 2.
2. Claim petition is dismissed to the extent of respondent No.3 to 5.
3. Petitioners are entitled to recover an amount of Rs.49,86,240/- from respondent No.1-A and 2 jointly and severally with future interest @ 7% P.A. from the date of institution of claim petition till actual realization of awarded amount.
4. Respondent No.1-A and 2 are hereby directed to deposit awarded amount in following bank account number of Tribunal. Bank details of Tribunal are as under:

(1)	Name of Account	The Member, Motor Accident Claim Tribunal, Dhule.
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(2)	Bank Name	State Bank of India, Treasury Branch, Dhule.
(3)	Type of Account	Savings Account
(4)	Account Number	40709171826
(5)	I.F.S.C. Code	SBIN0008254
(6)	M.I.C.R. Code	424002955

5. Appropriation of awarded amount in between petitioner No.1, 2, 4, 5 is directed as under:

- (i) Petitioner No.1 entitled to get amount of Rs.25,86,240/- + interest.
- (ii) Petitioner No.2 entitled to get amount of Rs.15,00,000/- + interest.
- (iii) Petitioner No.4 entitled to get amount of Rs.5,00,000/- + interest.
- (iv) Petitioner No.5 entitled to get amount of Rs.4,00,000/- + interest.

6. Out of amount awarded in favour of petitioner No.1, amount to the tune of Rs.15,00,000/-, be kept in F.D.R. in any nationalized bank for the period of five years as per the choice of her and rest of the amount be disbursed in her favour by prescribed mode as per bank details supplied by her vide Exh.82 to 84 respectively.

7. Petitioner No.2 is minor, amount awarded in her favour be kept in F.D.R. in any nationalized bank as per the choice of petitioner No.1 till attaining the age of majority by her.

8. Amount awarded in favour of petitioner No.4 and 5, be disbursed in their favour by prescribed mode as per bank details supplied by them vide Exh.85 to 90.

9. Bank detail Exh.82 to 90 of petitioner No.1, 4 and 5 shall be treated as a part and parcel of the award.

10. Award be drawn up accordingly.

11. Delivered and pronounced in open court.

4] In the event the Insurance Company succeeds in the present First Appeal, then the compensation would be borne by the other respondent – Insurance company. As such, the claim of the claimants would not be reduced.

5] In any event, the appeal of the Insurance Company on the total claim is also negligible. In view of the same, the following order is passed :

ORDER

i] At this stage, the applicant no.1 is permitted to withdraw the amount of Rs.10,86,240/- along with the interest accrued thereon. The applicant no. 4 is permitted to withdraw the amount of Rs.3 lacs along with interest accrued thereon and the applicant no.5 is permitted to withdraw the amount of Rs.2,50,000/- along with interest accrued thereon.

ii] The applicants to file undertaking that in the event the appellant succeeds in the matter, the amount withdrawn will be returned to the Court within eight weeks of the order of this Court.

iii] Civil Application is disposed of accordingly.

[ARUN R. PEDNEKER]
JUDGE

DDC