



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

**931 CIVIL APPLICATION NO. 13362 OF 2023
IN FA/1941/2023**

SMT ASHA BAPU NANNAWARE AND ORS

....Applicant

VERSUS

BAJAJ ALLIANCE GENERAL INSURANCE COMPANY LTD, DIVISIONAL
OFFICE AND ORS

.....Respondent

.....

Advocate for Applicant : Mr. Patil Vijay Bhalerao
Advocate for Respondent No.1 : Mr. M. R. Deshmukh

.....

**WITH CIVIL APPLICATION NO. 5748 OF 2023
IN FA/1941/2023**

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CORAM : ARUN R. PEDNEKER, J.

Dated : December 20, 2023

PER COURT :-

1. Heard the learned Advocate appearing on behalf of the respective parties.
2. The appeal is filed by the Insurance Company on the ground of false involvement of the insured vehicle in the accident. The learned Advocate for the Insurance Company does not dispute that the accident has occurred on 05/03/2018 and the deceased succumbed to

the injuries on 06/03/2018. He submits that on 18/03/2018 a complaint was lodged by one Mr. Sharad Nannaware on the basis of information given to him by Mr. Mahendra Nannaware that the insured motorcycle was involved in the accident. The learned Advocate submits that the source of information is not known as to how the insured vehicle was involved in the accident and in view of the same initial burden is not discharged by the applicant that the insured vehicle was involved in the accident.

3. Per contra, the learned Advocate appearing for the applicant submits that the further investigation is done in the matter and charge-sheet is filed in the case and the offence being bailable there is no formal arrest of the driver. He submits that there is no evidence brought on record as to collusion between the applicants and the owner /driver of the offending vehicle so as to show that the driver of the offending vehicle would subject himself to a criminal proceedings at the instance of the applicant.

4. The learned Advocate for applicant further submits that the claim of the petitioner has also not been disputed by the driver cum owner of the motorcycle, and as such, there is no dispute as regards the involvement of the owner cum driver of the insured vehicle. The learned Advocate submits that the accident has occurred in

early morning hours when the deceased had gone to answer the nature's call and obviously there were no witnesses at that time to the accident. He submits that prima facie there is evidence as to the involvement of insured vehicle as revealed from the investigation and the charge sheet being filed in the matter. So also there being no relation brought on record between the petitioners and the owner of the vehicle. So also the owner of the offending vehicle has not disputed the accident.

5. On these facts the Trial Court has rendered the finding of involvement of the insured vehicle in the accident. That is the best possible evidence that was available has been given by the applicant and that there is no contra evidence to suggest that the vehicle was not involved in the accident. Although the learned Advocate for the Insurance Company submits that there is no initial discharge of burden by the claimant and as such no contra evidence is necessary to dislodge the claim of the applicant. Prima facie taking into consideration the finding of the Tribunal, so also the charge-sheet filed in the matter and that there is no evidence brought on record indicating the relation between the applicant and the owner of offending vehicle, I deem it appropriate to permit the applicant to withdraw 50% of the amount deposited in this Court along with

accrued interest thereon till date subject to undertaking tot he satisfaction of the Registrar Judicial of this Court. The application for withdrawal of amount stands disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.