

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

**CIVIL APPLICATION NO.1233 OF 2023
IN
FIRST APPEAL NO.991 OF 2021**

- 1) Archana W/o Milind Rajurkar,
Age-50 years, Occu:Service,
- 2) Aishwarya D/o Milind Rajurkar,
Age-27 years, Occu:Education,
- 3) Nimish S/o Milind Rajurkar,
Age-19 years, Occu:Education,
- 4) Sheelabai W/o Padmakarrao Rajurkar,
Age-73 years, Occu:Household,
- 5) Padmakarrao S/o Digambarrao Rajurkar,
Age-81, Occu:Pensioner,

All R/o-Plot No.88, Padmshali,
Near Panhmukhi Hanuman Temple,
Ganeshnagar, Nanded.

...APPLICANTS

VERSUS

- 1) Kewal Krishan S/o Gianchand,
Age-Major, Occu:Transport Business
& Owner of Truck No.JK-02/AU-9918,
R/o-Thara Kalwal, Billawar Kathua,
Jammu, 180 001 (Jammu & Kashmir),
- 2) The New India Assurance Company Ltd.,
Through its Divisional Manager,
Division Office 350700, First Floor,
Shivaji Market, Shalimar Road,
Jammu Tawi,

- 3) The New India Assurance Company Ltd.,
Through its Divisional Manager,
Division Office at Lahoti Complex,
Vazirabad, Nanded.

...RESPONDENTS

...
Mr.M.M. Kanakdande Advocate i/b. Mr. Kiran M. Nagarkar
Advocate for Applicants.
Mr.Aniruddha S. Usmanpurkar Advocate for Respondent
Nos.2 and 3.
...

**CORAM: SMT. VIBHA KANKANWADI AND
Y.G. KHOBRADE, JJ.**

DATE : 10th APRIL, 2023

ORDER :

1. Present Application has been filed for withdrawal of the amount which was of the share of applicant No.3. It is stated that applicant No.3 who was minor when the Appeal was filed, has now become major. It is stated that he is in need of money for the purpose of his education. It will not be out of place to mention here that by earlier application, this Court has permitted the other applicants to withdraw the amount of Rs.25,00,000/- (Rupees Twenty Five Lakh) each. However, at that time there was no prayer for the withdrawal of the amount from the share of applicant No.3.

2. Learned Advocate appearing for respondent Nos.2 and 3 has serious objections. He submits that at the most amount of Rs.5,00,000/- may be permitted to withdraw, as the Appeal challenges the entire amount and also the contention has been taken that the deceased was himself negligent to the extent of 50%.

3. Heard learned Advocate Mr. Kanakdande instructed by Mr. Nagarkar for the applicants and learned Advocate Mr. Usmanpurkar appearing for respondent Nos. 2 and 3.

4. Before proceeding further, it will not be out of place to mention here that there was an attempt to consider as to whether the matter can be settled and both the sides were asked to prepare their calculations. Accordingly, those calculations have been submitted today. As per the claimants, the total amount of compensation which they are entitled to, is Rs.2,71,87,060/-, whereas, as per the calculations of respondent Nos.2 and 3, it is Rs.1,68,52,334/-. Further, the half of the said amount has been further deducted towards the negligence of the deceased himself and the ultimate calculation of respondent Nos.2 and 3 is Rs.84,26,167/- with interest @ 6% per annum. We are of the

view that when this stand is taken, it is not possible to have settlement between the parties.

5. As regards the contention in respect of 50% negligence is concerned, the defence in the written statement of respondent Nos.2 and 3 was "according to them, the accident occurred due to sole negligence on the part of the deceased. They contended that the claimants and the owner of the above numbered truck collided with each other and filed false petition for compensation." So as on today it appears that there was no specific defence about the contributory negligence and therefore, there was no specific issued to that effect framed by the learned Tribunal. Whether the appellant can take the said stand in the First Appeal would be decided at the time of final hearing. As on today, the learned Tribunal has awarded compensation of Rs.2,52,93,250/- together with interest from the date of institution of petition i.e. 12th April 2018 till realization. The learned Tribunal has awarded compensation of Rs.50,00,000/- with proportionate costs of the petition and interest to applicant No.3. Under such circumstance, there is no hurdle in allowing applicant No.3 to withdraw an amount of Rs.25,00,000/- (Rupees Twenty Five Lakh). Since applicant No.3 has become

major, we will not allow the withdrawal of the amount through his mother.

6. Under such circumstance, the Application stands partly allowed i.e. to the extent of prayer clause "B", and applicant No.3 is allowed to withdraw an amount of Rs.25,00,000/- (Rupees Twenty Five Lakh). Prayer Clause "C" stands rejected.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/APR23