

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3122 OF 2019
IN
FIRST APPEAL NO.279 OF 2020

Malan Kisan Khade ... Applicant
V/s.
The Branch Manager,
New India Assurance Co. Ltd. And Ors. ... Respondents

Mr. Siddarth R. Karpe for the Applicant.
Mr. Milind V. More for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATED : 17th APRIL, 2023

PC.:

1. Heard learned counsel for the Applicant and learned counsel for the Respondents.
2. The learned counsel for the Applicant submits that deceased was sole earning member of Applicant's family. The Applicants have no source of income. They need the amount for daily expenses. Hence, requested to allow the application.
3. The learned counsel for the Respondent-Insurance Company strongly objected to allow the application, as deceased was sleeping under the offending vehicle, so he was himself negligent and there was no negligence of the driver of offending

vehicle. But Tribunal has not considered this fact and awarded the exorbitant an excessive compensation. Hence, requested to dismiss the application.

4. I have heard both the learned counsel.

5. Deceased was sole earning member of the Applicant's family. They have no source of income. The Applicants need the amount for daily expenses. The Tribunal has considered the negligence of driver of offending vehicle. The issue raised by the learned counsel for Respondent-Insurance Company can be considered at the time of final hearing of the Appeal and I pass following order:-.

O R D E R

- (i) Application is allowed.
- (ii) The Applicants are permitted to withdraw 30% amount along with accrued interest thereon out of deposited amount on furnishing undertaking.
- (iii) Application is disposed of.

(SHIVKUMAR DIGE, J.)