

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.3524 OF 2023
IN
FIRST APPEAL (ST) NO.31317 OF 2019**

Disha Tanaji Jagtap And Ors. ... Applicants
V/s.
The Oriental Insurance Co. Ltd. And Ors ... Respondents

Mr. Vaibhav R. Gaikwad for the Applicants.

Mr. Devendranath S. Joshi for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATED : 21st APRIL, 2023

PC.:

1. Heard learned counsel for the Applicants and learned counsel for the Respondent-Insurance Company.
2. Learned counsel for the Applicants submits that the deceased was sole earning member of the Applicants' family. The Applicants have no source of income, they need the amount for daily expenses. Claimant No.1 wife of deceased also expired during covid period, if this Court allows the application. The rests of the Applicants be permitted to withdraw the amount as the Trial Court has directed 40% amount out of award amount to be given to the wife of deceased who is no more. Hence, requested to allow the application.
3. Learned counsel for the Respondent-Insurance Company strongly objected to allow the application on the ground that

deceased himself gave dash to the offending truck from backside. The offence was registered against the deceased, the driver of offending truck stepped into witness box and has stated that accident occurred due to sole negligence of deceased, but this fact is not considered by the Tribunal. Hence, Respondent-Insurance Company preferred appeal against it and requested to dismiss the application.

4. I have heard both learned counsel. Considering evidence on record the Tribunal has held 50% negligence of driver of offending vehicle and 50% negligence of deceased. The deceased was the sole earning member of the Applicants' family. The Applicants have no source of income, they need the amount for their daily expenses and education. The Applicant Nos.1 and 2's mother is expired after the death of her husband during pendency of this appeal. Hence, I pass the following order.

ORDER

- (i) The Application is allowed.
- (ii) The Applicants are permitted to withdraw 25% amount, out of the deposited amount along with interest accrued thereon, on furnishing undertaking.
- (iii) The respondent–original claimant no.1 i.e. mother of applicant No.1 and 2 is expired hence, the applicants are permitted to withdraw the amount of her share.
- (iv) The Appellant to carry out amendment in respect of death of respondent no.1 i.e. claimant No.1.

5. The application stands disposed of.

(SHIVKUMAR DIGE, J.)