

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

**INTERIM APPLICATION NO. 336 OF 2023  
IN  
FIRST APPEAL NO. 23 OF 2022**

Smt. Bharti Sunil Shinde And Ors. ...Applicants

**In the matter between**

Divisional Manager, New India Assu. Co. Ltd. ...Appellant

Versus

Smt. Bharti Sunil Shinde And Ors.. ...Respondents

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Mr. Pritesh K. Bohade for the Applicant in IA/336/2023.

Mr. Asim S. Vidyarthi a/w Adv. Ishita Bhole, for the Appellant in  
FA/23/2022 & Respondents in IA/336/2023.

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**CORAM : S. G. DIGE, J.**

**DATE : 6<sup>th</sup> FEBRUARY 2023.**

**P.C. :**

1. Heard learned counsel for the Applicants and learned counsel for the Respondents.

2. The learned counsel for the Applicants submits that deceased was the son of Applicants. Deceased was the Karta of Applicants' family, after the death of deceased, there is no source of income to the Applicants' family. Hence, they require the amount for daily expenses. Applicant No. 1 is the widow of deceased. Applicant

Nos. 2 and 3 are the sons of deceased and Applicant Nos. 4 and 5 are parents of the deceased.

3. The learned counsel for the Respondents-Insurance Company vehemently objected to allow the application on the ground that the accident had occurred due to sole negligence of the deceased, as he dashed to the stationary truck from back side, but Tribunal has not considered this fact.

4. The learned counsel further submits that at least Tribunal ought to have considered contributory negligence of the deceased as there were brake marks on the road which indicates that the accident had occurred due to negligence of deceased. But, this fact is not considered by the Tribunal which is challenged by the Respondents by way of Appeal. Hence, requested to dismiss the Application.

5. I have heard both learned counsel. Deceased was the Karta of Applicants' family. Applicants needed the amount for their daily expenses. The issue of contributory negligence as raised by learned counsel for the Respondents, can be considered at the time of final hearing. Hence, I pass following order.

### **ORDER**

1. Application is allowed.
2. Applicants are permitted to withdraw 50% amount along with accrued interest thereon out of deposited amount on furnishing undertaking.
3. Application is disposed of.

(S. G. DIGE, J.)