

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 798 OF 2024
IN FA/4029/2023

Nita Narendra Duthade And Others

VERSUS

Divisional Manager, United India Insurance Company Ltd. And Anr

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Advocate for Applicant : Mr. Patnurkar Vinayak. D.

Advocate for Respondent No.1 : Mr. A.B. Gatne

Advocate for Respondent No.2 : Mr. G.L. Deshpande

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CORAM : S.G. MEHARE, J.

DATED : MARCH 15, 2024

PER COURT:-

1. Heard learned counsel for the applicants and learned counsel for the respondents.
2. The case of the insurer is that the offending vehicle was parked as usual in front of its owners house. However, the said vehicle has been falsely implicated in the crime. The deceased was a heavy drunkard. The medical evidence supports the contention of the appellant that at the time of the incident, he was under the influence of intoxication. The learned Tribunal did not consider this aspect and incorrectly applied the rule of preponderance of probability. The facts were proved before it. In such a case of false involvement, the applicants should not be allowed to withdraw money.
3. Both counsels read para 23 of the impugned judgment and award. Those were the observations on the involvement of the

vehicle insured with the appellant. The Court has appreciated the facts and held that the offending vehicle was involved in the accident. However, the evidence appears balanced. Hence, the following order :

ORDER

- (i) The application is partly allowed.
- (ii) The applicants are allowed to withdraw 50% of the amount deposited with accrued interest, on the undertaking that they would deposit the money if the impugned judgment and award is reversed.
- (iii) The amount allowed to be withdrawn shall be apportioned equally.
- (iv) The share of the minor daughter shall be invested with any Nationalized bank of the choice of her guardian mother in a fixed deposit till she attains the majority with a right to receive the quarterly interest.
- (v) The copy of the fixed deposit receipt be submitted with this Court.
- (vi) Balance amount be deposited in fixed deposit as per rules.
- (vii) The natural guardian mother shall furnish the undertaking for and on behalf of the minor daughter.
- (viii) 50% of the amount allowed to be withdrawn be transferred to the account of learned MACT, Court at Nanded. On depositing the

(3)

amount, the learned MACT, Nanded should release the amount as directed above.

(S.G. MEHARE, J.)

Mujaheed//