



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

**CIVIL APPLICATION NO. 13453 OF 2023
IN FAST/9890/2023 WITH CIVIL APPLICATION
NO. 5122 OF 2023 IN FAST/9890/2023
WITH CIVIL APPLICATION NO. 5123 OF 2023
IN FAST/9890/2023**

Manisha Dattatraya Gulve And Ors

VERSUS

United India Insurance Company Ltd Through Its Branch Manager
And Anr

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Advocate for Applicant : Mr. Shaikh Mazhar A. Jahagirdar

Advocate for Respondent No.2 : Mr.V. R. Mundada

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CORAM : S. G. MEHARE, J.

DATE : 16.02.2024

PER COURT :

1. Heard the learned counsel for the applicants and the learned counsel for the State.

2. It is a case of death claim. The deceased was engaged in milk business. He was the income tax payer. The learned counsel for the applicants submits that the deceased had income more than Rs. 5,00,000/- preceding the year of accident. His income

was taxable. Therefore, applicants are entitled to withdraw the entire amount deposited with this Court.

3. The learned counsel for the insurance company states that there was nine days delay in lodging the FIR. He also submitted that instead of releasing the amount the entire amount be deposited in the fixed deposit with a right to receive interest at quarterly rests.

4. Perhaps the, deceased may have been taken to the hospital first. The hospital must have given intimation but it is a practice in the *Marathwada* that unless some persons goes to the police, they do not register the crime. So it is to be examined whether delay is deliberate affecting the involvement of the insured vehicle in the accident.

5. It is a compensation of the claimants. No one can direct them how and where to spent and invest the money. The Court has to see the entitlement of the parties to withdraw the amount. There were five claimants including the fathers. Two were minors, one was widow and the mother. Whether in the circumstances

the father was entitled to the compensation under Section 166 of the Motor Vehicle Act is a question. The children were major at the time of filing of the application. However, it has been argued that they are pursuing education. They were completely dependent on the income of the deceased. In the facts and circumstances of the case the following order is passed :-

ORDER

- (i) The application is partly allowed.
- (ii) The applicant wife and mother are allowed to withdraw their 1/4th share with accrued interest from the amount deposited on the undertaking that they will deposit the money if the impugned judgment and award is reversed. However, half of the money they are receiving should be kept in a Fixed deposit in any of the Nationalized Bank on their choice For five years.
- (iv) The entire share of the major sons should be deposited in any Nationalized Bank for five years with right to receive interest at the quarterly rests.

**CIVIL APPLICATION NO. 5122 OF 2023
IN FAST/9890/2023 (DELAY)**

6. Heard the learned counsel for the applicant/appellant and the learned counsel for the respondents. There is short delay of 20 days. The delay appears plausible. Hence, the delay is liable to be condoned. Hence, the following order :-

ORDER

- (i) The application is allowed.
- (ii) The registry should register the First Appeal.
- (iii) The learned counsel for respondent waives service of notice of respondent Nos. 1 to 5.

**CIVIL APPLICATION NO. 5123 OF 2023
IN FAST/9890/2023 (STAY)**

7. Heard the learned counsel for the applicant and the learned counsel for the contesting respondents.

8. The appellant has deposited the entire compensation amount in the Court.

9. There is no dispute about the calculations. The contesting respondents/claimants are allowed to withdraw the amount. However, their interest has been protected. At this juncture nothing remained to be executed against the appellant. The appellant has good case for stay. Hence, the following order

ORDER

- (i) The application is allowed.
- (ii) The execution and implementation of the impugned award is stayed till final conclusion.
- 10. Call record and proceeding.
- 11. Stand over to 8th May 2024.

(S. G. MEHARE)
JUDGE

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