



This order dated 17th October, 2024 is corrected as per the order of speaking to the minutes dated 19th December, 2024.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

**79 CIVIL APPLICATION NO. 10889 OF 2024
IN FA/2334/2023**

NIKITA AMOL HANDE AND ORS
VERSUS
THE NEW INDIA ASSURANCE COMPANY LTD THROUGH ITS BRANCH
MANAGER AND ORS

...
Advocate for Applicant : Mr. Swapnil Sunilkumar Dargad.
Advocate for Respondent No.1 : Mr. M. R. Deshmukh.

...
AND
**CIVIL APPLICATION NO. 7251 OF 2023
IN FA/2334/2023**

THE NEW INDIA ASSURANCE CO LTD THROUGH ITS BRANCH
MANAGER
VERSUS
NIKITA AMOL HANDE AND OTHERS

...
Advocate for Applicant : Mr. Mohit R. Deshmukh.
Advocate for Respondent Nos.1 to 7 : Mr. Swapnil Sunilkumar Dargad.

CORAM : **KISHORE C. SANT, J.**

DATE : 17th October, 2024.

P.C.:

. Heard the learned counsel for the parties.

Application for stay:

2 Since the amount is already deposited by the appellant in this Court, there shall be stay to the effect, execution and operation of the impugned judgment and award till disposal of the appeal. The application stands allowed and disposed of.

Appeal:

3 Heard.

4 Issue notice to respondents. Mr. Dargad, learned counsel waives notice on behalf of respondent Nos.1 to 7 / claimants.

5 The record and proceedings be called for.

6 Both the learned counsels for the parties request the Court to take up the matter for final disposal at the stage of admission.

7 The parties are put to notice that if time permits, the matter shall be taken up for final disposal at the stage of admission.

Application for withdrawal of amount:

8 This application is for withdrawal of the amount deposited in this Court by the appellant/insurance company. The application is opposed on the ground of contributory negligence. It is the case of the insurance company that the deceased, rider of the motorcycle insured with the insurance company, himself was negligent as he gave dash to a bullock cart from the back side. There is heavy damage caused to the motorcycle from the front side. He submits that it is clearly a case of contributory negligence. He submits that the entitlement would be only 50%. He also relied upon the judgment in the case of ***Nishan Singh & Ors. Vs. Oriental Insurance Company Ltd. Through***

Regional Manager & Ors., [2018] 6 S.C.R. 795, in which the Honourable Apex Court had considered that the driver of the motor vehicle was driving the vehicle without keeping safe distance, as envisaged in Regulation 23 of the Rules of the Road Regulations, 1989.

9 The learned counsel Mr. Dargad, however, submits that it has come on record that the motorcycle was damaged from both the sides, front as well as back. There is no case of contributory negligence.

10 Considering the above position, this Court finds that at the most the liability would come to 50% if in the appeal it is held that the deceased was negligent. Considering the above, the following order:-

ORDER

- I. The applicant **Nos.1, 6 and 7** are permitted to withdraw Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand Only) i.e. approximately 50% of the amount deposited in this Court on furnishing usual undertaking. The remaining amount be kept in fixed deposit in any nationalized bank till disposal of the appeal.
- II. With this, the civil application for withdrawal of amount stands disposed of.

[KISHORE C. SANT, J.]