



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

**CIVIL APPLICATION NO. 8851 OF 2024
IN FAST/2543/2024**

**PRIYANKA PRAFULLA BAVISKAR AND ORS
VERSUS
SUBHASH RAMCHANDRA SHELAR AND ANR**

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Mr. Madhav M. Bhokarikar, Advocate for Applicants.
Mr. A. S. Usmanpurkar, Advocate for Respondent No.2.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 20th AUGUST, 2024.**

P.C.:-

1. This is an application seeking withdrawal of the amount on behalf of original claimants.
2. The respondent/Insurer filed Appeal assailing Award dated 19.04.2023 passed by the Tribunal at Jalgaon for amount of Rs.73,96,630/-.
3. Mr. Bhokarikar, learned Advocate appearing for the applicants submits that applicants have lost bread earner of the family. They are in need of money. The Tribunal after considering the material on record passed Award. Therefore, he urges to release the amount in favour of the claimants.
4. Mr. Usmanpurkar, learned Advocate appearing for the respondent/Insurance Company vehemently opposes the application contending that this is a case of contributory negligence. The deceased was driver of car, which dashed against insured Truck. He submits that Truck driver had initially lodged the report of accident attributing negligence against the deceased. However,

later on FIR has been lodged against Truck driver. He submits that Tribunal has wrongly assessed income.

5. Considering the submissions advanced and reasoning as adopted by the Tribunal, *prima facie*, it is clear that deceased lost life on account of motor vehicular accident involving insured vehicle. The driver of the insured vehicle was prosecuted. He did not step into witness box before the Tribunal. The Tribunal has relied upon Income Tax Returns to quantify the income of the deceased. Keeping in mind the aforesaid facts, there is no impediment in permitting applicants to withdraw 50% of the amount out of the amount deposited by the Insurance Company on condition that applicant nos.1, 3 and 4 execute personal undertaking to the satisfaction of the Registrar (Judicial) of this Court.

6. Rest of the amount be kept in Fixed Deposit till disposal of the Appeal. The amount be disbursed to applicant nos.1, 3 and 4 in proportion to the apportionment made under the Award of the Tribunal.

7. Civil Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE