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

**119 CIVIL APPLICATION NO. 7384 OF 2024
IN FA/1220/2024**

JYOTI VIJAY DUKRE AND ORS

....Applicants

VERSUS

NEW INDIA ASSURANCE COMPANY LTD AND ANR

.....Respondents

Mr. A. S. Gandhi, Advocate for the applicants

Mrs. Anagha V. Rotte, Advocate for respondent No.1

CORAM : KISHORE C. SANT, J.

DATE : 12th SEPTEMBER, 2024

P. C.

1. Heard.

2. This application is by the ori. claimants for withdrawal of the amount of compensation deposited in this court.

3. The learned advocate for the appellant opposed the application. It is his submission that there are good grounds

involved in the appeal. Income of the deceased is taken on much higher side. The deceased was working as a driver on the private vehicle. The learned trial court further has considered his income to be Rs.23775/- per month. He further submits that the deceased was serving in a company. The employer in his evidence before the learned trial court deposed that in the company there is scheme of Employees State Insurance applicable. He, thus, submits that if the claimants have availed the benefit of ESI scheme then the claimants would not be entitled to receive the compensation under the MV Act.

4. The learned advocate for the applicants submits that no compensation under ESI is claimed by the claimants as he was not on duty when he met with an accident.

5. Considering the above, following order:

ORDER

a] The application is partly allowed.

b] The claimants are entitled to withdraw 50% of the amount alongwith accrued interest on giving usual undertaking to this court. Further 25% of the amount is allowed to be withdrawn alongwith accrued interest on furnishing solvent surety/security to the satisfaction of the learned Registrar (Judicial) of this court. Remaining amount be deposited in a fixed deposit in any nationalized bank to be renewed from time to time pending the appeal.

c] The amount be disbursed in the same proportion as given in the trial court. It is also reported that original claimant No.4 died during the course of proceeding. His amount be equally distributed amongst the other claimants.

d] The above order is subject to filing an undertaking by the claimants in this court stating

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that no amount is claimed under the ESI scheme and in case, it is found that such amount is withdrawn, then the claimants would re-deposit the said amount in the office of this court within twelve weeks thereafter.

e] With this, the application is disposed off.

[KISHORE C. SANT, J.]

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