



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 7423 OF 2024
IN FA/1823/2024

Archana Sanjay Rajkotiya And Anr
VERSUS
The New India Assurance Co.ltd. And Ors

- Mr. P. N. Putthankulam, Advocate for the Applicants
- Mr. M. R. Deshmukh, Advocate for the Respondent No.1

CORAM : KISHORE C. SANT, J
DATE : AUGUST 30, 2024

PER COURT :

1. This application is for withdrawal of the amount deposited by the Insurance Company in this Court.

2. Applicants were dependents on deceased Sanjay Kantilal Rajkotiya who died in an accident on 02.01.2011.

3. Application is vehemently opposed by learned Advocate for the Appellant. It is submitted that the accident took place because of negligence of some unknown vehicle when the deceased was occupant of Swift Dezire Car. Claim was filed under Section 166 of the

Motor Vehicle Act. While considering the same, negligence under Section 166 it is to be specifically established that the negligence is of the owner of the vehicle from whom compensation is sought. The compensation is not sought under Section 163-A or 164 of the Act. The report immediately lodged after accident could show that the complaint was lodged against unknown truck which gave dash to the car from back side. This report would show that there is no negligence on the part of the driver of the car. In that view, he submit that there are chances of succeeding the Appeal.

4. Learned Advocate for the Applicants submit that though the amount claimed was more than Rs. 1 crore, Tribunal has granted only Rs. 45 lacs and, therefore, the entire amount be allowed to be withdrawn on certain conditions.

5. Considering the ground taken in the Application, this Court finds that the balance would be met by permitting the Applicants to withdraw the amount to the extent of 75%. Hence, following order:

O R D E R

- (a) Application is allowed.
- (b) Applicants are permitted to withdraw 40% amount of their share on furnishing undertaking that in case Appeal is allowed they shall redeposit the amount within 12 weeks from such judgment in the office of the Court along with interest.
- (c) Remaining 35% amount of their share is permitted to be withdrawn on furnishing solvent surety/security to the satisfaction of the learned Registrar (Judicial) of this Court.
- (d) Remaining amount be kept in the fixed deposit in any nationalized bank to be renewed on periodical basis.

(KISHORE C. SANT, J.)