



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

CIVIL APPLICATION NO. 9240 OF 2023 IN FAST/22695/2023
WITH
CIVIL APPLICATION NO. 9239 OF 2023 IN FAST/22695/2023

THE NEW INDIA ASSURANCE COMPANY LTD THROUGH ITS BRANCH
MANAGER BASMATH ROAD PARBHANI
VERSUS
SANJIWANI WO JAYANT DONGARE AND 7 OTHERS

...
Advocate for Applicant/Appellant : Mr. A. S. Usmanpurkar
Advocate for Respondents No.1 to 5/claimants : Mr. A. R. Gaikwad
Advocate for Respondent No.7 : Mr. Padalkar holding for
Mr. Amar D. Soman (through Video Conferencing)

...
WITH
CIVIL APPLICATION NO. 14571 OF 2023 IN FAST/22695/2023

SANJIWANI WO JAYANT DONGARE AND OTHERS
VERSUS
THE NEW INDIA ASSURANCE COMPANY LTD THROUGH ITS BRANCH
MANAGER BASMATH ROAD PARBHANI AND OTHERS

...
Advocate for Applicants/claimants : Mr. Amol R. Gaikwad
Advocate for Respondent No.1 : Mr. A. S. Usmanpurkar
Advocate for Respondent No.3 : Mr. Padalkar holding for
Mr. Amar D. Soman (through Video Conferencing)

...

CORAM : S. G. MEHARE, J.

DATE : 19-01-2024

PER COURT :-

1. Heard the respective learned counsels for the parties.
2. Since two vehicles were involved, two insurers were held liable to pay compensation equally. One of the insurance

companies preferred the present appeal on the ground that notional income of Rs.20,000/- is incorrectly assessed. The deceased was a stamp vendor. The benefit of future prospects has been considered excessively. The ratio laid down in the case of ***National Insurance Company Limited versus Pranav Sethi, 2018 ALL SCR 953*** and the ground of negligent has not been considered. The insurer/the present appellant was not negligent. Hence, there was no liability.

3. Learned counsel for the applicants submits that another insurance company has satisfied the award. There are no substantial grounds to oppose the application for withdrawal of the amount.

4. It appears that the involvement of the vehicle insured with the insurer is not denied. The grounds raised require a detail hearing and re-appreciation of evidence. Hence, the order;

- i) Civil Application No.14571 of 2023 is partly allowed.
- ii) The applicants/original claimants are entitled to withdraw 75% of the amount deposited by the appellant/insurance company, with accrued interest thereon, on furnishing an undertaking that they will re-deposit the amount, if the impugned judgment and award is reversed.

CIVIL APPLICATION NO.9239 OF 2023

5. For the reasons mentioned in the application, the delay is liable to be condoned.

6. The application is allowed.
7. The delay caused in preferring the appeal stands condoned.
8. The office is directed to register the appeal.
9. After registration of the appeal, issue notice to the respondents, returnable on 18.03.2024.
10. Mr. Gaikwad, learned counsel waives service of notice for the respondents No.1 to 5/claimants. Mr. Padalkar, learned counsel waives service of notice for respondent No.7.

CIVIL APPLICATION NO.9240 OF 2023

11. The entire amount of the award is also deposited. Hence, the execution and operation of the impugned judgment and award of the learned Member, Motor Accident Claims Tribunal and Adhoc District Judge-1, Gangakhed, in Motor Accident Claims Petition No.54 of 2018, dated 10.02.2023, is stayed till disposal of the appeal.

FAST/22695/2023

12. **Admit.**
13. Call R & P.

**(S. G. MEHARE)
JUDGE**