



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

**989 CIVIL APPLICATION NO. 8710 OF 2024 (withdrawal)
IN FAST/14706/2024**

Hema Ajay Thakur And Others

VERSUS

The Divisional Manager, United India Insurance Company Ltd

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Advocate for Applicant : Mr. Shaikh Kayyum Najir

Advocate for Respondent 1 : Mr. M. R. Deshmukh

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WITH

CIVIL APPLICATION NO. 5876 OF 2024 (Delay) IN FAST/14706/2024

WITH

CIVIL APPLICATION NO. 5877 OF 2024 IN FAST/14706/2024 (stay)

The Divisional Manager, United India Insurance Company Ltd

VERSUS

Hema Ajay Thakur And Others

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Advocate for Applicant : Mr. Deshmukh Mohit R.

Advocate for Respondent : Mr. Shaikh Kayyum

CORAM : S. G. CHAPALGAONKAR, J.

Dated : August 23, 2024

PER COURT :-

CA for withdrawal of amount :-

1. Heard learned advocates appearing for the respective parties.
2. The applicants are seeking permission to withdraw the amount deposited by the Insurance Company in pursuance to MACP No.727 of 2022 seeking compensation towards death of Ajay Thakur in motor vehicular accident dated 16.10.2022. At the time of accident, deceased was riding scooter bearing registration no.MH-20/FB-5955. It was dashed by the

offending vehicle. On account of the said accident, deceased had suffered fatal injuries. According to the claimants, they were dependent on income of the deceased. He was only bread winner of the family. With these contentions, learned advocates appearing for the applicants seek permission to withdraw the amount.

3. Mr. Deshmukh, learned advocate appearing for the respondent/appellant vehemently opposed the prayer contending that, it is a case of contributory negligence. Since accident occurred in center of the road, deceased was equally responsible for the accident. He would further submit that the Tribunal has considered excessive income of the deceased although there is no evidence to justify the same.

4. Having considered the submissions advanced, it can be gathered that there is no dispute as regards to accidental death of the deceased due to involvement of the insured vehicle. Although, challenge is raised on the point of negligence, the insurer has not examined driver of the insured vehicle to controvert the police papers, which suggests negligence on the part of the driver of the insured vehicle.

5. So far as income of the deceased is concerned, he was alleged to be driver by profession. Although, there is no admissible evidence in support of such contentions, by going with the notional income of a person maintaining family of the five dependents, it would be appropriate to permit the claimants to withdraw 75% of the amount that falls to the share of applicant nos.1, 4 and 5. Since applicant nos.2 and 3 are minors, the amount falling to their share would be invested in Fixed Deposit till further orders from this Court.

Consequently, civil application is partly allowed. The 75% of amount falling to share of applicant nos.1, 4 and 5 be disbursed to them on furnishing usual undertaking to the satisfaction of the Registrar (Judicial) of this Court. Civil application for withdrawal of amount stands **disposed off**.

CA for Delay :-

6. Heard learned advocates appearing for the respective parties.

7. Considering submissions advanced and averments in the application, case is made out to condone the delay. Hence, application is allowed. Delay stands condoned. Application is **disposed off**.

8. Appeal be registered. On registration of appeal, issue notice to the Respondents. Learned counsel Mr. Shaikh waives notice for respondent nos.1 to 5.

9. Call for Record and proceeding.

CA for Stay :-

10. Mr. Deshmukh, learned advocate appearing for the applicant submits that entire amount of award is deposited with the Registry of this Court.

11. Statement is not controverted by the learned advocate appearing for the respondents/original claimants.

12. Consequently, civil application is allowed in terms of prayer clause "B" and **disposed off**.

(S. G. CHAPALGAONKAR)
JUDGE

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