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

**4 CIVIL APPLICATION NO. 12594 OF 2023
IN FA/2270/2023**

KALYAN KISAN DOKE AND ORS

....Applicants

VERSUS

**THE NEW INDIA ASSURANCE COMPANY LTD THROUGH ITS
BRANCH MANAGER AND ORS**

.....Respondents

Mr. Umakant U. Wagh, Advocate for the applicants

Mr. M. M. Ambhore, Advocate for respondent No.1

CORAM : S. G. MEHARE, J.

DATE : 08th MARCH, 2024

P. C.

1. Heard learned counsel for the applicants and learned counsel for the respondents.

2. The respondent is opposing the application on the ground that the application was filed under Section 163-A of the M. V. Act, 1988. There is a ceiling to compensation if the application is filed under Section 163-A of the M. V. Act. However, learned Tribunal treated the application as if it is

under Section 166 of the M. V. Act and made incorrect calculations. Without considering the negligence, he has referred to the order of the learned Tribunal dated 18-01-2021, wherein the learned Tribunal has observed that the petition is under Section 163-A of the M. V. Act in which no issue of negligence is involved.

3. Learned counsel for the applicants would submit that the parties have proceeded with. The learned Tribunal has considered the case under Section 163 of the M. V. Act and held the respondent liable to pay the compensation.

4. The learned Tribunal has recorded the findings on negligence. Offending vehicle was insured with the respondent. Deceased was unmarried. However, brother was also the claimant. Brother and parents are entitled only in the case, brother was dependent on the deceased, and parents have no income source or not able to maintain themselves. In the peculiar circumstances, Keeping all these points open the

following order is passed:-

ORDER

- i] The application is partly allowed.
- ii] Applicants are allowed to withdraw 50% of the amount deposited with this court with accrued interest on undertaking that they would deposit the amount, if the judgment and award is reversed.
- iii] Amount be apportioned equally to the applicants.

[S. G. MEHARE, J.]