



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

**CIVIL APPLICATION NO. 682 OF 2024
IN FA/4402/2023 WITH C.A. NO. 14377 OF 2023 IN FA/4402/23**

Ranjana Sanju Valvi And Ors

....Applicant

VERSUS

The Branch Manager National Insurnace Co Ltd And Ors

.....Respondent

.....

Advocate for Applicants : Mr. S.A. Deshpande

Advocate for Respondent No.1 : Mr. A. B. Gatne

....

CORAM : S. G. MEHARE, J.

DATE : 19.01.2024

ORDER :

CIVIL APPLICATION NO. 682 OF 2024 (WITHDRAWAL)

1. Heard the learned counsel for the applicants and the learned counsel for the appellant/insurer.
2. The appeal has been preferred on the ground that the deceased who fallen down from the motorcycle met with an accident due to his own negligence. The driver of the vehicle did not possess the license to drive the heavy goods vehicle. However, these two material aspects have not been considered by the Tribunal. He has also argued that the impugned award is perverse and liable to be set aside.

3. Per contra, the learned counsel for the applicant would submit that there was no case of negligence of the deceased. If the submissions of the learned counsel for the appellant/insurer are considered, in no way the deceased who fallen down from the motorbike could be held negligent. It was an accident caused by the truck insured with the appellant. Even if the driver of the truck who caused the accident did not possess license to drive the heavy goods vehicle, the insurance company would not absolve from the responsibility.

4. Considering the objections raised and the way, in which the accident happened, the Court is of the view that the applicants are entitle to receive the compensation amount. Hence, the following order.

ORDER

- (i) The application is partly allowed.
- (ii) The applicants are entitled to withdraw 75% of the amount deposited with the Court along with accrued interest on the undertaking that they will deposit the amount if the award is reversed.

CIVIL APPLICATION NO. 1477/2023 (STAY)

5. The learned counsel holding for the applicants states that on the next date the vakalatnama will be filed.
6. Heard the learned counsel for the applicants.
7. The learned counsel for the appellant states that the appellant has deposited the entire compensation amount. Hence, the present application deserves to be allowed. Hence, the following order

ORDER

- (i) The application is allowed.
- (ii) The execution, implementation and effect of the impugned order is stayed till conclusion of the trial.

FIRST APPEAL NO. 4402 OF 2023

8. **Admit.**
9. Issue notice to the respondents after admission. Learned counsel Mr. S.A. Deshpande waives the service of notice on behalf of the respondents.
10. Call record and proceeding.
11. List the matter after receipt of record and proceeding.

(S. G. MEHARE)
JUDGE

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