

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO. 3815 OF 2019
IN
FIRST APPEAL NO. 1624 OF 2013

Archana Ramesh Mali @ Magdum And Ors.Applicants

In the matter between:

The New India Insurance Co. Ltd. And Anr.Appellants

V/S

Archana Ramesh Mali @ Magdum And Ors.Respondents

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Mr. Akshay A. Kulkarni for the Applicant.

Mr. D.S. Joshi (through V.C.) for Respondent No.1.

CORAM : M. M. SATHAYE, J.

DATED : 26 SEPTEMBER 2024

P.C.:

1. Heard learned counsel for the parties.
2. This is an application by Claimants for withdrawal of the amount deposited by the Appellant-Insurance Company in the above appeal pursuant to which the stay was granted on 23 September 2013. He submits that the appeal itself is of 2013 and till date no amount is received by the applicants/Claimants and prays for the withdrawal of money.
3. Learned counsel for the Insurance Company, on the other hand,

submits that in the present matter, the Respondent-owner is also available for pressing recovery of the awarded amount as he is also jointly and severally held liable. He further submits that in the present matter, since the deceased himself was driver of the offending vehicle and the accident did not involve any other vehicle, there is arguable case that there is no liability of the Insurance Company.

4. Considering that the hearing of the appeal has not taken place finally till today and almost 11 years have passed and further considering that it is only the Insurance Company which has come in appeal seeking stay, leading to deposit of the amount, in my view, partial withdrawal is necessary in the interest of justice. Hence following order.

5. Application is allowed. All the Applicants are permitted to jointly withdraw 50% of the amount deposited by the Insurance company in the concerned Tribunal at Kolhapur, alongwith accrued interest, subject to usual undertaking to be filed by the Applicants stating that the withdrawal will be subject to final outcome of the appeal and they shall bring back the amount along with interest, as may be directed by the Court at the time of final hearing. Let such undertaking be filed within a period of 4 weeks from today in the concerned Tribunal.

6. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)