

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.7643 OF 2024
WITH
FIRST APPEAL NO.430 OF 2024

Surekha Rohidas¹ Potale and Ors. ...Applicants

In the matter between:-

Oriental Insurance Company Limited ...Appellant

vs.

Surekha Rohidas Potale and Ors. ...Respondents

Mr.Ravindra S. Pachundkar:-	Advocate for Applicants.
Ms.Poonam Mittal i/b. Mr.S.S.Dwivedi:-	Advocate for Appellant – Insurance Company.

CORAM : S. M. MODAK, J.

DATE : 19th AUGUST 2024

P. C. :-

1. Heard learned Advocate for the Claimants – Respondent Nos.1, 2, 3 and 5. The Respondent No.1 is the wife and Respondent Nos.2 and 3 are the children of the deceased Rohidas. Whereas, Respondent No.5 – Visaram is the father of the deceased. The Respondent No.4 – Krishnabai is not represented. It is told that she might have expired.

2. Let, the Appellant – Insurance Company to serve her of this

¹ Expired

Appeal. Private notice, in addition, is allowed. Affidavit of service be filed.

3. Even, the Respondents before this Court can also file the death certificate, if they are having.

4. These Respondents are praying for withdrawal.

5. I have perused the impugned judgment. The Appellant – Insurance Company took a defence about non existence of the policy and the driver of the offending vehicle was not having a valid licence and permit. Both the grounds are rejected by the Motor Accident Claims Tribunal (“Claims Tribunal”) in Para No.19.

6. The date of accident is 22nd April 2015. The period of the policy is 19th December 2014 to 18th December 2015. The plea of absence of licence and permit was not proved by adducing evidence.

7. Rest of the grounds taken in this Appeal are, about the calculation and the income. There is a strong opposition for withdrawal of the amount. For the reasons stated above and for the reasons mentioned in the Application, the Respondents are entitled to withdraw 75%. The Claims Tribunal has made an apportionment in Para No.2 of the Operative Order. The Applicant No.4 – Krishnabai Visaram Potale (Respondent No.4) is not before this Court. Hence,

order:-

ORDER

- (i) The Respondent Nos.1, 2, 3 and 5 are permitted to withdraw 75% of the deposited amount along with accrued interest on furnishing an usual undertaking.
 - (ii) The Claims Tribunal to do an apportionment as mentioned in the Judgment / Award dated 21st August 2019 as per the share allotted to them.
8. In view of the above, **Interim Application stands disposed of.**
9. Let, the Appellant – Insurance Company to file a compilation of documents within four weeks.
10. Stand over to **24th September 2024.**

[S. M. MODAK, J.]