IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO. 403 OF 2025
IN FAST/2665/2024

MUKTABAI BALAJI GIKWAD AND ANR
VERSUS
THE DIVISIONAL MANAGER NEW INDIA ASSUARNCE COM. LTD DIVISIONAL OFFICE AURANGABAD AND ANR

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Mr. N. J. Patil, Advocate for Applicants.
Mr. Amol G. Vasmatkar, Advocate for Respondent No.1.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 17th JANUARY, 2025.

P.C.:-

1. Heard learned Advocate appearing for the respective parties.

2. By this application, applicants seek withdrawal of amount deposited by respondent/insurance company in pursuance to the award dated 01.09.2023 passed by Motor Accident Claims Tribunal, Ahmedpur in M.A.C.P. No.06/2021.

3. The applicants filed proceeding under Section 166 of the Motor Vehicle Act raising claim for compensation towards accidental death of Vaibhavi i.e. their daughter.

4. The respondent/insurer contested the claim on the ground that driver of the offending vehicle was not holding valid license and claimant no.1, who was riding scooter has contributed in the cause of accident.

5. The learned Tribunal after considering pleadings and evidence, allowed the claim and passed award for Rs.5,00,000/- alongwith with interest @ 6% per annum in favour of applicants. The aggrieved insurer filed present appeal mainly on the ground

that there was breach of policy, as driver has no valid license and claimant no.1 is contributor in cause of accident.

6. Having considered submissions advanced, it is apparent that there is no dispute about accidental death of Vaibhavi in motor vehicular accident dated 20.12.2020 involving Truck insured with respondent/insurance company. So far as defence of driving license is concerned, entitlement of applicants to receive compensation cannot be denied and it would be dispute between insurer and owner of vehicle. The second contention that mother of the deceased Vaibhavi i.e. claimant no.1 has contributed in cause of accident may not arise for consideration, as this would be the case of composite negligence. Hence, following order:

ORDER

a. Civil Application is partly allowed.

b. The claimants are permitted to withdraw 70% of the compensation amount deposited by insurer with the Registry of this Court on furnishing usual undertaking to the Registrar (Judicial) of this Court.

c. The rest of the amount be kept in a Fixed Deposit for the term that offers a higher rate of interest.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/January-2025