



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

**CIVIL APPLICATION NO. 791 OF 2025
IN FA/347/2024**

SHOBHABAI BHAGWAN DHANGAR AND OTHERS
VERSUS
THE MANAGER (LEGAL) THE NEW INDIA ASSURANCE CO LTD
DHULE

Advocate for Applicants : Mr. S.V. Dixit h/f Mr. Mohit Shrikant Shah
Advocate for Respondent No.1 : Mr. S. R. Bodade
Advocate for Respondent Nos.2 and 3 : Mr.P. H. Patil

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CORAM : S. G. CHAPALGAONKAR, J.
DATE : 31st JANUARY, 2025.

P.C.:

1. Leave to correct. Amendment to be carried out forthwith.
2. Heard the learned Advocate for the applicants.
3. The applicants are original claimants in M.A.C.P. No.393/2017. They raised claim seeking compensation towards accidental death of Bhagwan Dhangar, who was pillion rider on the said motorcycle. The said motorcycle is alleged to have been dashed by the offending Car. The Tribunal after considering the pleadings and evidence of respective parties accepted case of the claimants and passed an award for Rs.13,87,000/- in favour of the claimants.

4. Aggrieved Insurance Company filed present appeal by carrying forward defence that the insured Car was not involved in accident. Mr.Bodade, learned Advocate appearing for the Insurance Company points out that the accident was occurred on 18.04.2017 whereas the F.I.R. has been lodged on 21.04.2017. The spot panchanama do not show presence of the insured Car.

5. Per-contra Mr.Dixit, learned counsel appearing for applicants supports the judgment and award passed by the Tribunal.

6. Having considered submissions advanced, it is apparent that deceased Bhagwan was pillion rider on motorcycle. He suffered fatal injuries in the accident. The claimants relied upon the evidence of C.W.-2 Vinod Koli/rider of the motorcycle. He deposed before the Tribunal about the involvement of the vehicle as well as the manner of the accident. The Tribunal accepted his evidence while recording findings of involvement of the insured Car and negligence on the part of its driver. Prima facie, the award passed by the Tribunal favours the claimants. The respondent-Insurance Company has deposited an amount of Rs.20,11,371/- with Registry of this Court in pursuance of the directions on Civil Application for grant of stay. In that view of the matter, the claimants are certainly entitle for partial withdrawal of the

amount of compensation on certain conditions. Hence the following order :-

ORDER

- (i) The Civil Application is partly allowed.

- (ii) The Claimants are permitted to withdraw 50% of the amount of compensation with accrued interest, deposited by the respondent-Insurance Company with the Registry of this Court, subject to condition that they shall file an undertaking to Registrar (Judicial) of this Court that in case of adverse order in appeal, they shall redeposit the amount within a period of eight weeks.

- (iii) The Civil Application stands disposed off.

[S. G. CHAPALGAONKAR, J.]

sga