



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

**19 CIVIL APPLICATION NO. 836 OF 2025
IN FA/2119/2024**

AND

**20 CIVIL APPLICATION NO. 839 OF 2025
IN FA/2117/2024**

AND

**21 CIVIL APPLICATION NO. 840 OF 2025
IN FA/2118/2024**

KAMLESH HARISH KATE

VERSUS

**THE BRANCH MANAGER THE NEW INDIA ASSURANCE
COMPANY LTD AND ANR**

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Advocate for Applicant : Mr. Bhosle Meera Ambadasrao
Advocate for Respondent No. 1 : Mr. Manoj Dharmaraj Shinde

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 23, 2025

PER COURT :-

1. Heard learned Advocate appearing for the respective parties.

2. The applicants are claimants in respective claim petitions. Claim petitions are filed under provision of Section 166 of Motor Vehicles Act. The victim was traveling in the insured vehicle bearing registration no. MH-13-AC-5604 at the time of accident. It toppled, resultantly victim suffered injuries. Two persons lost life, other suffered injuries. The respective claim petitions filed before the tribunal were defended by insurer on the ground that the vehicle in question is registered and insured as private vehicle and same is used for

carrying passengers on hire and reward basis. As such, there is breach of condition of the policy. The tribunal upon evaluation of evidence allowed respective claim petition while rejecting defence of the insurer.

3. The appellant insurer impugned the award on two grounds. Firstly, there is a breach of conditions of policy and insurer is entitled to avoid defence in terms of Section 149 (2) of the Motor Vehicle Act. Secondly, the assessment of compensation is excessive and exorbitant.

4. Looking to the grounds of appeal as raised there is no dispute about the accident involving insured vehicle, so also the death and injuries suffered by the victims. Assuming that the insurer / owner of the vehicle breached the terms and conditions of the policy, insurer may have right to recover compensation from the owner of the vehicle however right of claimants to recover the compensation from insurer may not be affected. In that view of the matter at present the claimants can be permitted to withdraw 60 % of the compensation amount as deposited by the insurer subject to condition that they shall file an undertaking to the satisfaction of Registrar that in case adverse order is passed in appeal, they shall redeposit the amount along with the interest of 6 % per annum within period of eight weeks from date of such direction in appeal.

5. In view of above, the Civil Applications are partly allowed. The applicants are permitted to withdraw 60 % compensation amount along with the accrued interest thereon as deposited with Registry of this Court upon furnishing

undertaking as stated above. Undertaking to be filed within a period of four weeks from today. Civil Applications are disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

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