IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 1381 OF 2025
IN
FIRST APPEAL NO. 477 OF 2025

SAVITA SANJAY WANVE AND OTHERS
VERSUS
CHOLAMANDALAM GENERAL INSURANCE CO. AND ORS
...
Advocate for Applicants : Mr. Deshmukh Mohit Rameshrao
Advocate for Respondent no. 1 : Mr. A.S.Usmanpurkar

CORAM : SHAILESH P. BRAHME, J.
RESERVED ON : 12.08.2025
PRONOUNCED ON : 14.08.2025

PER COURT :

Heard both the sides on application for withdrawal of amount.

2. The respondent-insurance company has filed affidavit-in-reply, which is taken into consideration.

3. The applicants, who are the dependents of deceased Sanjay Shankar Wanve, are praying for disbursement of amount of Rs. 1,57,54,462/- (Rs. One Crore Fifty Seven Lakh Fifty Four Thousand Four Hundred and Sixty Two only) deposited by the respondent-insurance company. To substantiate the claim, reliance is placed on the compilation of the documents, which were produced in the Tribunal below and exhibited also. Anticipating the plea of the respondent-insurance company that vehicle in question is planted, various submissions are made by learned advocate Mr. Deshmukh.

4. It is submitted that deceased Sanjay was driving a motor cycle on 29.12.2018 and he was given dash by Innova Car bearing registration No. MH-13/AF-9909, which is insured with respondent-insurance company. It is consistently brought on record by information of MLC case (Exh. 21), first

information report (Exh. 25), the details of the vehicles collected from the R.T.O. (Exh. 65), that Innova Car was involved. It is submitted that the statements of Harish Jakhete (Exh. 27) and Seema Jakhete (Exh. 28) corroborate that offending vehicle was Innova Car bearing No. MH-13/AF-9909. It is further submitted that investigation of the offence reveals three vehicles, out of them two are Innova Cars having insurance, which would probabalise the claim of the applicants. It is submitted that police statement of Javed shows that immediately on 30.12.2018, the offending vehicle was repaired. My attention is also adverted to the deposition of Bharat Pachode, Assistant Sub Inspector. It is further contended that the theory of planting of vehicle is after thought.

5. Per contra, learned counsel Mr. Usmanpurkar appearing for the respondent-insurance company vehemently submits that accident occurred on 29.12.2018 and F.I.R. was registered on 09.01.2019 with incomplete registration number of the offending vehicle. Police statement of Harish (Exh. 27) shows that immediately information regarding the accident was conveyed to Surendra Modi on 31.12.2018. Similarly, the examination-in-chief of Harish before the Tribunal shows that information about the accident was given to Mr. Surendra Moli as well as Mr. Dinde. It is incomprehensible as to why the registration number of the vehicle was not either disclosed to the Police or the claimants from 31.12.2018 to 08.06.2019. This inaction creates doubts regarding claimants case. It is submitted that deceased, Mr. Modi and Mr. Dinde were knowing each other, then why the information of the offending vehicle was not furnished to the police. The cross-examination of Harish makes the case more suspicious. It is contended that Harish is a got up witness and entire story is articulated by implanting the offending vehicle to extract compensation. It is submitted that neither any statement of Mr. Dinde and Mr. Modi was recorded, nor are they examined before the Tribunal.

6. The learned counsel further submits that no investigation is conducted

by the police as to which vehicle is involved out of three. It is submitted that the quantum is fixed on the basis of salary slip (Exh. 45), which is imaginary because at the relevant time recommendations of 7th Pay Commission were not implemented and salary was only around about Rs. 58,000/- per month.

7. I have gone through the papers tendered across the bar as well as affidavit in reply. Accident in question occurred on 28.12.2018 and first information report was registered on 09.01.2019 stating that Innova Car bearing No. MH-13/9099 was involved. The registration number of the offending vehicle first time disclosed in the police statement of Harish Jakhete recorded on 08.06.2019. During course of investigation three vehicles bearing Nos. MH-13/AY-9099-Innova Car, MH-13/AZ-9099 and MH-13/AA-9099-Bolero came to light. The respondent-insurance company did not lodge any complaint with the police for alleged false accident or implanting of the offending vehicle.

8. MLC information (Exh. 21) which is immediately recorded after few hours of the accident shows that offending was vehicle Innova Car. First information report also mentions Innova Car. Cross-examination of Bharat Pachode, ASI, shows offending vehicle as Innova Car. *Prima facie* it is established that offending vehicle is Innova Car.

9. The papers of investigation (Exh. 65) disclose that two vehicles bearing Nos. MH-13/AY-9099 and MH-13/AZ-9099 are Innova Cars having valid insurance at the relevant time. 6 Third vehicle was Bolero and it cannot be said to be an offending vehicle. The cross-examination of Bharat Pachode shows that offending vehicle was MH-13/AF-9909. The police papers probabalies case of the applicants that offending vehicle, which is insured with the respondent-insurance company is involved in the accident. Though doubt is raised that three different vehicles surfaced during investigation, the statements of Harish, his wife Seema and Javed, disclose

offending vehicle is MH-13/AF-9909.

10. There is possibility that Mr. Modi and Mr. Dinde might be knowing the deceased. It cannot be expected that as they were knowing the accident and therefore they would disclose the registration number of the vehicle to the police. It cannot be assumed that Mr. Modi and Mr. Dinde were knowing that police were not informed the exact registration number. At this juncture, the plea of the insurance company that it's a case of planted vehicle, cannot be accepted.

11. The statement of Mr. Dinde and Modi and sister of the deceased was not recorded and no investigation was made as to which vehicle was actually involved, cannot be looked into at this stage. The case is not required to be proved beyond reasonable doubt.

12. In view of law laid down by the Supreme Court in the matter of **Geeta Dubey and others V/s United India Insurance Co. Ltd. and others; AIR 2025 Supreme Court 386**, the claimant is expected to prove his case on preponderance of probabilities. It is further observed in the judgment that in case of alleged false involvement of the vehicle, non filing of the complaint by the insurance company with the police is a relevant factor. In the present matter also the respondent-insurance company did not take any action, if the involvement of the vehicle was doubtful. In that view of the matter, I am of the considered view that the applicants are entitled to receive part of the amount deposited by the respondent-insurance company.

13. The monthly salary taken into consideration by the Tribunal might be vulnerable but that is not sufficient to deny the relief in its entirety. The entire amount deposited by the insurance company cannot be disbursed. No comments can be offered at this juncture as to whether theory of implanting of vehicle is after thought or not.

14. Considering over all circumstances, I find it fit to permit the

applicants to receive 60% of the amount deposited by the insurance company on furnishing undertaking.

15. The Civil Application is partly allowed and the applicants shall be disbursed 60% of the amount with accrued interest deposited by the respondent-Insurance Company on furnishing undertaking. Balance amount shall be invested in any nationalized bank.

16. Needless to state that observations made in this order are *prima facie* in nature.

(SHAILESH P. BRAHME, J.)

mkd/-