



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

56 FIRST APPEAL NO. 23 OF 2025
WITH
CIVIL APPLICATION NO. 2233 OF 2024
IN FA/23/2025
WITH
CIVIL APPLICATION NO. 7678 OF 2024
IN FA/23/2025

CHOLA MANDALAM MS GENERAL INSURANCE CO LTD
VERSUS
SMT HEMLATA HASMUKH JAIN AND 5 OTHERS

...
Advocate for Appellant : Mr. Usmanpurkar Aniruddha S.
Advocate for Respondent Nos.1 to 4 :Mr. Kamble Dnyaneshwar T.
...

CORAM : S. G. CHAPALGAONKAR, J.
Dated : 24.01.2025

PER COURT :-

ORDER IN FIRST APPEAL :-

1. Re-issue notice to respondent Nos. 5 & 6 indicating that First Appeal itself would be taken for final disposal at the stage of admission.
2. After service is complete the appellant Insurance Company is at liberty to file paper book containing pleadings

and oral evidence recorded before the learned Tribunal and move this Court for final disposal at the stage of admission.

ORDER ON WITHDRAWAL APPLICATION :-

3. Heard the learned Advocates appearing for the respective parties.

4. Applicant seeks withdrawal of the amount in pursuance to the award dated 31.08.2023 passed in MACP No. 141 of 2018 by the Motor Accident Claims Tribunal, Jalna. The applicants are original Claimants. They instituted claim under Section 166 of the Motor Vehicles Act towards the accidental death of Hasmukh Jain, who died in accident dated 30.07.2018. Respondent Insurance Company contested the claim on the ground of false involvement of insured vehicle.

5. Mr. Usmanpurkar, in his endeavour to demonstrate false involvement submitted that FIR itself was belatedly lodged. Actually there was no accident between two vehicles but it is falsely alleged that insured vehicle was dogged vehicle in which deceased was travelling. The Tribunal dealt with aforesaid aspects, relied on evidence of Investigating Officer and a

Co-passenger who was travelling along with deceased and concluded that accident occurred due to involvement of the insured vehicle. Mr. Usmanpurkar also raises objection as to assessment of compensation being excessive and exorbitant. However, that would be an issue to be dealt with at the time of final hearing. Presently award passed by the Tribunal is in favour of the Claimants. However, keeping in mind the nature of defence, claimants can be permitted to partial withdraw of amount putting stringent conditions. In that view of the matter, following order :

ORDER

- (i) The Civil Application is partly allowed.
- (ii) Applicant No. 1 is permitted to withdraw 50% amount falling to the share of Claimant Nos. 1 and 4 with accrued interest, on furnishing usual undertaking and solvent surety /security to the satisfaction of the learned Registrar, (Judicial) of this Court.
- (iii) Rest of the amount shall be kept in Fixed Deposit in any nationalized bank to be renewed from time to time till disposal of the appeal.

(iv) The Civil Application stands disposed of.

ORDER ON STAY APPLICATION :-

6. Mr. Usmanpurkar, learned Advocate appearing for Insurance Company submits that entire amount with interest is deposited with the Registry of this Court. His statement is supported by endorsement of office. Consequently Civil Application for stay stands allowed and disposed off in terms of prayer Clauses (B) (C).

**(S. G. CHAPALGAONKAR)
JUDGE**

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