IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

936 CIVIL APPLICATION NO. 3339 OF 2024
IN FA/4470/2023

Sudhir Haribhau Pawar & others ....Applicants

VERSUS

National Insurance Company Ltd
& others .....Respondents

.....
Mr. A. S. Gandhi, Advocate for Applicants.
Mr. S. V. Kulkarni, Advocate for Respondent No.1.

CORAM : R. M. JOSHI, J.
DATE : 7th FEBRUARY, 2025.

PER COURT :

1. This application is filed by claimants for withdrawal of 100% amount deposited by insurance company while filing appeal challenging the order passed by the Tribunal in Motor Accident Claim Petition No 97/2019 dated 12.04.2023.

2. Learned counsel for applicants/original claimants contends that the deceased was not driving/riding any vehicle. He was a pillion rider. As such, he is not responsible for occurrence of the accident in any manner whatsoever. It is his contention that contributory negligence will not be applicable to the deceased and

ultimately to the claimants. He further argued that the claimants have proved income of deceased and there is no reason to take exception to the findings recorded by the Tribunal with regard to his income.

3. Learned counsel for appellant/insurer opposed withdrawal of any amount. It is his contention that if the amount is allowed to be withdrawn and the insurer succeeds in the appeal, the amount cannot be recovered from the claimant.

4. Present appeal is filed by the insurer on the ground of contributory negligence of the other vehicle and also being aggrieved by the order of pay and recover. It is the contention of learned counsel for the appellant that there is breach of condition of insurance policy and as such appellant/insurer is not liable for payment of compensation.

5. Even if contention of appellant is ultimately accepted that there was any breach of condition by the owner of the vehicle, the claimants being third party are not responsible for the same. Apart from this, prima facie perusal of the impugned award indicates that

the Tribunal has taken into consideration evidence led before it while determining income of deceased. In such circumstances, this is a fit case wherein 75% of the amount is permitted to be withdrawn by the claimant. However, considering the apprehension raised by learned counsel for insurer, 50% amount is permitted to be withdrawn on simple undertaking whereas remaining 25% amount is permitted to be withdrawn on solvent surety, alongwith accrued interest thereon.

(R. M. JOSHI)
Judge

dyb

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

936 CIVIL APPLICATION NO. 13765 OF 2023
IN FA/4470/2023

National Insurance Company Ltd
& others ....Applicants

VERSUS

Sudhir Haribhau Pawar and others .....Respondents

.....
Mr. S. V. Kulkarni, Advocate for the applicants.
Mr. A. S. Gandhi, Advocate for Respondent No. 1.

CORAM : R. M. JOSHI, J.
DATE : 7th FEBRUARY, 2025.

PER COURT :

1. Appellant has already deposited entire amount of compensation granted by the Tribunal.

2. Hence, application stands disposed of in terms of prayer clause ‘B’.

(R. M. JOSHI)
Judge

dyb

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

936 FIRST APPEAL NO. 4470 OF 2023

National Insurance Co. Ltd. .. Appellant

versus

Sudhir Haribhau Pawar & others .. Respondents

Mr. S. V. Kulkarni, Advocate for the appellant.
Mr. A. S. Gandhi, Advocate for Respondent No. 1.

CORAM : R. M. JOSHI, J.
DATE : 7th FEBRUARY, 2025.

PER COURT :

1. Call R & P.

(R. M. JOSHI)
Judge

dyb