



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

966 CIVIL APPLICATION NO. 4514 OF 2025

IN FA/202/2025

PEERPASHA HAJIMALNG SHAIKH AND ORS

VERSUS

THE NEW INDIA ASSURANCE COMPANY LTD THROUGH ITS
BRANCH MANAGER

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Advocate for Applicants : Mr. Fayaz Khurshid Patel.

Advocate for Respondent No.1 : Mr. S. S. Rathi.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 20.08.2025

PER COURT :-

1. Heard both sides.
2. Present application is for withdrawal of amount of Rs.48,59,397/- deposited by respondent/insurance company. Its a injury claim. Applicants are relying on the police papers and pointed out that he sustained injuries in the accident. It is further submitted that the theory of implanting vehicle is after thought. My attention is adverted to medico legal certificate, first information report and the cross-examination of the applicants.
3. Application is opposed by learned counsel Mr. Rathi. It is submitted that accident took place on 29.03.2022, in which the motorcycle was being driven by the applicant and his maternal uncle was pillion rider. But still report was lodged on

09.04.2022 which creates doubt. Considering the FIR, it is seriously doubted as to the involvement of offending vehicle in the accident in question. It is further submitted that applicants did not produce any evidence to show income. The disability is of 40% but the loss of earning capacity is treated to be 100%. The quantum is vulnerable and exorbitant. For that purpose, insurance company has preferred appeal. It is submitted that applicants may not be permitted to receive more than Rs.10,00,000/-.

4. I have considered rival submissions of the parties. The medico legal certificate which was issued on the same date shows that accident occurred due to truck. FIR also refers to the offending vehicle. The insurance company did not lodge any report with the police for false accident for implanting of vehicle. I am guided by law laid down by the Supreme Court in the matter of *Geeta Dubey Vs. United India Insurance Company Ltd.*

5. Belated lodging of FIR cannot be a ground to deny compensation to the claimants. The submissions of learned counsel Mr. Rathi have substance that when pillion order was there, report could have been lodged earlier. His submissions regarding quantum needs consideration at the time of final

hearing. Similar is the case with his submissions in respect of 40% of disability which is treated to be 100% loss of earning capacity. Contentious issues cannot be dealt with at the interlocutory stage. I am of the considered view that applicants are entitled to receive the part of the amount deposited by the insurance company.

6. Civil application for withdrawal of amount is allowed partly permitting the applicants to receive Rs.20,00,000/- on furnishing undertaking to the satisfaction of the Registrar (Judicial) of this Court.

7. Balance amount shall be invested in Nationalized Bank.

In First Appeal.

8. **Admit.**

9. Learned counsel Mr. Patel waives service of notice for respondents/claimants.

10. Call for Record and Proceedings from the concerned Court if not called for.

(SHAILESH P. BRAHME, J.)

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vmk/-