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

**40 CIVIL APPLICATION NO. 7929 OF 2025
IN FAST/17408/2025**

ASHA RAMESHWAR ZUMBAD AND OTHERS

VERSUS

MAGMA H D I GENERAL INSURANCE AND ANR

WITH

CIVIL APPLICATION NO. 6596 OF 2025 IN FAST/17408/2025

MAGMA HDI GENERAL INSURANCE COMPANY LTD

VERSUS

ASHA RAMESHWAR ZUMBAD AND OTHERS

WITH

CIVIL APPLICATION NO. 6597 OF 2025 IN FAST/17408/2025

Mr. R.V. Gore, Advocate for the applicants-claimants.

Mr. M.R.Deshmukh, Advocate for the insurance company.

CORAM : KISHORE C. SANT, J.

DATE : 13.10.2025

PC :-

CIVIL APPLICATION FOR WITHDRAWAL OF AMOUNT

01. Heard learned Advocates for the parties for some time. This application is for withdrawal of amount deposited by the Insurance Company with the Commissioner under Employees Compensation Act, as per the impugned judgment and award.

02. Application is vehemently opposed by learned Advocate Mr. Deshmukh for the insurance company. He submits that there is breach of terms of policy. The driver at the time of accident was not possessing valid licence to transport vehicle carrying hazardous chemical. The licence was only for driving transport vehicle. When there is such breach

of police, the insurance company would not be liable to pay any compensation. In such cases the liability would totally shift upon owner of the vehicle. He points out that there is e-way bill on record showing that the vehicle was carrying Chloro Acetyl Chloride of 5000 kg. He further submits that in such cases there is no question of pay and recover. The appellant would be at loss in case the amount is not recovered.

03. Learned Advocate for the applicant, on the other hand, submits that when the vehicle was being driven by the applicant, no any hazardous chemical was found in the vehicle. He submits that the Tribunal has considered all the aspect and there is no breach of condition. As such, he prays for allowing the application.

04. Considering the above, one thing is clearly seen that there is defence specifically raised by the appellant insurance company that the driver of the truck i.e. deceased was not holding valid and effective licence. There is discussion by the learned Tribunal about appreciation of evidence. It is considered that the insurance company failed to point out that there was hazardous chemical in the vehicle, when he met with accident.

05. This Court finds that an earning member of the family is lost. The dependents would require some financial assistance for their survival. On the contrary, the insurance company has already deposited the amount in the office of learned Commissioner, as required by the Statute. Keeping the amount lying in idle condition would be of no use to

any of the parties. Therefore, following order :-

ORDER

- i) This application is allowed.
- ii) The applicants are allowed to withdraw 25% of the amount deposited along with accrued interest on furnishing usual undertaking that in-case the appeal is allowed and the claimants are held not to be entitled to the compensation amount, they shall refund the same within 12 weeks from the date of such order.
- iii) Further 25% of the amount is allowed to be withdrawn on furnishing solvent surety/security to the satisfaction of the learned Commissioner.
- iv) Remaining 50% amount shall be invested in fixed deposit of any nationalized bank to be renewed from time to time till disposal of the appeal.

CIVIL APPLICATION FOR CONDONATION OF DELAY

01. This Civil Application for condonation of delay of 66 days caused in filing the appeal.

02. For the reasons stated in the application, the delay stands condoned. The Civil Application is accordingly allowed and is disposed off.

CIVIL APPLICATION FOR STAY

01. Since the amount of compensation is already deposited, there shall be stay to the impugned judgment and award till disposal of the appeal.

02. This Civil Application is accordingly disposed off.

FIRST APPEAL

01. Issue notice to the respondents.

02. Learned Advocate Mr. R.V.Gore waives service of notice for the respondents.

03. Call for record and proceedings.

04. Parties are put to notice that the appeal will be taken up for final disposal at the stage of admission.

05. Stand over to 22.12.2025.

[KISHORE C. SANT, J.]