



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

59 CIVIL APPLICATION NO. 12580 OF 2024
IN FA/1344/2024

USHA SHANKAR RATHOD AND OTHERS
VERSUS
ICICI LOMBARD GENERAL INSURANCE CO LTD THROUGH ITS
AUTHORIZED SINGNATORY AND ANR

...
Advocate for Applicants : Mr. Dargad Swapnil Sunilkumar
Advocate for Respondent No.1 : Mr. M. R. Deshmukh
Advocate for Respondent No. 2 : Mr. Balasaheb S. Choure
...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : 30.01.2025

PER COURT :-

ORDER ON APPLICATION FOR WITHDRAWAL :

1. Heard learned Advocates for respective parties.
2. Applicants seek permission to withdraw amount deposited by respondent insurance company in pursuance to award passed by MACT, Beed in MACP No. 240 of 2022.
3. Claimants are parents and sister of deceased. It is contention of Claimants that on 10.05.2022 deceased Abhijeet died in motor vehicular accident due to rash and negligent

driving by the insured tractor bearing No. MH-44-D-2417. According to them deceased was labour supplier and earning Rs. 4 Lakhs per annum. Attributing negligence against driver of the tractor, they raises claim under Section 166 of the Motor Vehicles Act.

4. The insurer contested the claim on the ground of false involvement of insured tractor and contributory negligence of deceased, so also quantum of compensation. Tribunal after evaluation of evidence accepted the case of claimants and passed award for Rs. 51,10,000/- in favour of Claimants. Aggrieved, insurer has filed this appeal and carried forward same defence as was raised before the tribunal.

5. Mr. Dargad, submits that entire amount as per award has been deposited by insurer and claimants may be directed to withdraw that much amount.

6. Mr. Deshmukh, vehemently opposes application contending that apart from ground of false implication, assessment of compensation is challenged being exponential. He submits that merely on the basis of entry regarding deposit of amount in Bank Accounts, Tribunal drawn inference of earnings. The deceased was hardly of 21 years old and in

absence of evidence as to actual earnings, learned Tribunal could not have passed award for an amount of Rs. 51,10,000/-. He would further submit that since claim is by the parents, one half amount ought to have deducted for personal living expenses of deceased.

7. Having considered the submissions advanced, prima-facie it appears that there are multiple grounds in appeal. Prima-facie finding of tribunal as to earnings of deceased appears to be based on superficial evidence. Further deduction of 1/3rd amount towards personal expenses cannot be countenanced, when claim is by parents. Looking to the controversy, it would be appropriate to permit Claimants to withdraw Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) out of amount deposited by insurer on furnishing usual undertaking to the satisfaction of the learned Registrar, (Judicial) of this Court. Hence the application stands allowed and disposed off in above terms.

8. Since record and proceedings is received, post the appeal for final hearing at admission stage on **13.03.2025**.

(S. G. CHAPALGAONKAR)
JUDGE