



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

972 CIVIL APPLICATION NO. 10174 OF 2025
IN FAST/8610/2024

BABYTAI W/O ASHOK SASWADE

VERSUS

NEW INDIA INSURANNCE CO LTD BRANCH PARBHANI AND ANR

...

Mr. S. B. Ghatol Patil, Advocate for Applicant

Mr. S. R. Bodade, Advocate for Respondent No.1

...

WITH

CIVIL APPLICATION NO. 6265 OF 2024
IN FAST/8610/2024

BRANCH MANAGER NEW INDIA INSURANCE CORRECTED AS
ASSURANCE CO LTD

VERSUS

BABYTAI ASHOK SASWADE AND OTHERS

WITH

CIVIL APPLICATION NO. 6266 OF 2024
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BRANCH MANAGER NEW INDIA INSURANCE CORRECTED AS
ASSURANCE CO LTD

VERSUS

BABYTAI ASHOK SASWADE AND OTHERS

...

CORAM : AJIT B. KADETHANKAR, J.

DATE : 19th SEPTEMBER 2025

PER COURT :-

CIVIL APPLICATION NO. 10174 OF 2025

1. Heard Mr. Ghatol Patil, learned counsel for the applicant and Mr. S. R. Bodade, learned counsel for the respondent/Insurance

Company.

2. The First Appeal is filed by the appellant/Insurance Company, taking exception to the findings recorded by the learned Member, Motor Accident Claims Tribunal, Parbhani, in M.A.C.P No.195/2019, vide its judgment and award dated 14.07.2023.

3. By the judgment and award impugned in the First Appeal, the learned Tribunal has directed the original respondent nos.1 and 2 to pay an amount of Rs.5,00,000/- to the present applicant for loss of earning capacity and non-pecuniary damages, in the claim petition. The learned Tribunal held that the entitlement of the claim has been assessed after applying judicial mind. Mr. Ghatol Patil, prays for permission to withdraw the entire amount deposited by the Insurance Company in this Court.

4. Mr. Bodade, learned counsel for the respondent/Insurance Company has taken me to the findings rendered by the learned Tribunal wherein a striking departure has been made from the law settled in the cases of "Act on Policy". Mr. Bodade, learned counsel would further submit that it was a case of an occupant in a private vehicle insured under an 'Act on Policy'. Mr. Bodade, learned counsel would further submit that learned Tribunal erred in recording the finding that there was no 'Act on Policy'. He has referred to the policy document which is titled as 'Private Car Liability Policy'. Mr. Bodade also submits that it is

basic law that an occupant in a private vehicle cannot be treated as a third party insofar as claims under the Motor Vehicle Act are concerned. He further contends that this is not a case of breach of policy but it was a case of non-existence of insurance cover for occupant risk under the policy. Therefore he submits that there is strong merit in his appeal and that amount if disbursed to the applicant, who is custodian of public money, the Insurance Company will suffer loss.

5. Mr. Ghatol Patil tenders a copy of judgment passed by this Court on 15.07.2025 in First Appeal No.398 of 2025 with First Appeal No.399 of 2025 with connected matters, arising out of the same accident which is the subject matter in the present Civil Application and present First Appeal. Mr. Ghatol Patil, would submit that the appellants in the cited matters were the co-passengers with the present applicant in the insured vehicle. On the ground of parity, Mr. Ghatol prays that at least partial amount out of the deposited amount by the Insurance Company be permitted to be withdrawn.

6. Mr. Bodade, learned counsel for the Insurance Company submits that a mere and bare withdrawal would definitely hamper the interest of the Insurance Company and even considering that there is a benevolent interest of the Insurance Company, that interest must be secured at least in the cases like the present one.

7. Upon hearing both the parties, I pass the following order :-

ORDER

- a. Civil Application is partly allowed.
- b. Applicant is permitted to withdraw 50% amount only on furnishing solvent surety/security to the satisfaction of the learned Registrar (Judicial) of this Court. Rest of the amount be deposited in fixed deposit in a nationalized Bank.
- c. Civil Application stands disposed of in above terms.

CIVIL APPLICATION NO. 6265 OF 2024

1. The First Appeal is filed by the appellant/Insurance Company, taking exception to the findings recorded by the learned Member, Motor Accident Claims Tribunal, Parbhani, in M.A.C.P No.195/2019, vide its judgment and award dated 14.07.2023.

2. Mr. Bodade, learned counsel for the applicant/Insurance Company submits that there is delay of 143 days caused in filing the present appeal. He would submit that the delay is purely an outcome of administrative exigencies in order to secure various approvals and funds from the superior authorities, some delay was inevitable. He would further submit that the delay is neither inordinate nor a result of deliberate or lethargic conduct on the part of any authority. He would further submit that the Insurance Company has also deposited the entire payable award amount, together with interest, in this Court. He further submits that the interest of the claimants is thus protected. With this, he prays for condonation of delay and registration of the First Appeal.

3. Mr. Ghatol Patil, learned counsel for the respondents graciously places his no objection for condonation of delay. The office record shows that the respondent no.2, though served, has not caused his appearance.

4. In these circumstances, I pass the following order :-

ORDER

a. Delay of 143 days, caused in filing First Appeal is hereby condoned.

b. Civil Application stands allowed.

c. Registry to register the appeal, subject to removal of office objections, if any, within two weeks from today, failing to which the registration of the appeal shall stands canceled.

5. After registration of the First Appeal, issue notice to the respondents, returnable on 17.10.2025. Mr. Ghatol Patil, learned counsel waives service of notice for respondent no.1.

6. The matter be listed after service of notice is complete. In the meantime, applicant shall take recourse to the provisions enumerated in Chapter II of the Bombay High Court Appellate Side Rules, corresponding to the stage and requirement of matter.

7. Parties are put to notice that the appeal shall be heard finally at the stage of admission.

8. Call Record and Proceeding.

9. This appeal shall be heard along with First appeal No.398 of 2025 and First Appeal No.399 of 2025.

CIVIL APPLICATION NO. 6266 OF 2024

1. This Civil Application is filed praying for stay to the execution and operation of the judgment and award impugned in the First Appeal.

2. Mr. Bodade, learned counsel for the Insurance Company submits that the entire payable award amount, together with interest, has been deposited by the Insurance Company in this Court and that the claimants are permitted to withdraw part of this deposit.

3. In view of this, stay granted earlier is made absolute in terms of prayer clause "B".

4. Civil Application is allowed and disposed of accordingly.

[AJIT B. KADETHANKAR, J.]

PRW