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

**CIVIL APPLICATION NO. 1140 OF 2025
IN FAST/25981/2024**

Sangita Sanjay Suryavanshi And Ors

....Applicant

VERSUS

National Insurance Co Ltd Through Its Branch Manager And Anr

.....Respondent

Advocate for Applicant : Mr. Fayaz Khurshid Patel

Advocate for Respondents : Adv. Sudhir V. Kulkarni For R/1

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 27TH JANUARY, 2025.

P.C. :-

ON APPLICATION FOR WITHDRAWAL.

1. Heard Mr. Fayyaz Patel, learned advocate for applicants.. Applicants are original claimants in M.A.C.P No. 338 of 2017 that was filed seeking compensation towards the accidental death of Sanjay Suryawanshi in the motor vehicular accident on 7.6.2017.

2. The respondent Insurance Company contested the claim on the ground of brach of conditions of the policy, absence of permit and contributory negligence against deceased.

3. The Tribunal, after evaluation of the evidence concluded that the accident occurred due to sole negligence on the part of driver of insured vehicle. Similarly, the Tribunal rejected the defence of the

Insurance Company on the point of Branch of conditions of policy.

4. Considering the submissions advanced and reasons stated in the impugned judgment and award, it is apparent that the accidental death of the deceased is not disputed. The issue as to breach of policy would be something between the insurer and owner of the vehicle and the insurer cannot avoid the liability to pay the compensation. As far as the issue of contributory negligence is concerned, the Tribunal on the basis of police papers recorded a finding of sole negligence of the driver of the insured vehicle. Therefore, the challenge on the aforesaid points can be considered at the time of final hearing of the appeal. At present, entitlement of the claimants to withdraw partial amount cannot be disputed. Hence the following order :-

O R D E R

(A) The application is partly allowed

(B) The claimants are permitted to withdraw an amount of Rs. 7,00,000/- (Seven Lakhs) out of the deposited amount, subject to usual undertaking to the satisfaction of Registrar. Rest of the amount be kept in fixed deposit in a Nationalized Bank with renewal clause, till final disposal of the appeal.

CIVIL APPLICATION FOR DELAY

1. Heard Mr. Kulkarni, learned advocate for the applicant. The applicant seeks to condone delay of 108 days caused in filing the appeal. Perusal of the reasons stated in the application depict that the delay has been occasioned on account of administrative reasons. The applicant has

not derived any disadvantage by making delay.

2. The contents of the application are not controverted by filing affidavit in reply. In that view of the matter, a case is made out to condone the delay. Hence, application stands allowed. Delay is condoned. Appeal be registered subject to removal of office objections.

3. On registration of appeal, issue notice to respondents returnable on 24.3.2025. Mr. Fayaz Patel Advocate waives notice for respondent Nos. 1 to 4

4. Parties are put on notice that the appeal may be heard finally at the stage of admission.

ON APPLICATION FOR STAY.

Heard Mr. Kulkarni. He would submit that the entire amount as per the award passed by Tribunal has been deposited. The statement is supported by office endorsement.

In that view of the matter, the application is allowed in terms of prayer clause (B) and disposed of.

[S.G. CHAPALGAONKAR, J]

grt/-