



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 CIVIL APPLICATION NO. 10492 OF 2024
IN FAST/26566/2024

The New India Assurnace Co Ltd Through Its Divisional
Manager

VERSUS

Sadhana Sunil Patil And Ors

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Advocate for Applicant : Ms. Anagha Rotte

Advocate for Respondents : Mr. Patil Shrikant S.

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WITH

CIVIL APPLICATION NO. 10493 OF 2024 IN FAST/26566/2024

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CIVIL APPLICATION NO. 939 OF 2025 IN FAST/26566/2024

CORAM : S. G. CHAPALGAONKAR, J.

Dated : February 07, 2025

ORDER:-

Delay Application :-

1. Heard learned advocates appearing for the respective parties.
2. The applicant seeks to condone the delay of 18 days caused in filing the appeal.
3. Perused the reasons as stated in the application. The case is made out to condone the delay. Consequently, civil application is allowed. Delay of 18 days caused in filing the appeal is condoned. CA stands disposed of.

4. Appeal be registered. On registration of the appeal, **Admit.**

5. Appellant to file private paper book containing pleadings and depositions. Once private paper book is filed, parties are at liberty to move this Court for final disposal of appeal.

Stay application :-

6. Learned counsel appearing for the applicant submits that the entire amount as per award passed by the Tribunal is deposited with this Court.

7. Statement is supported by office endorsement. Consequently, application is allowed in terms of prayer clause 'B' and disposed of.

Withdrawal of amount :-

8. Heard learned advocates appearing for the respective parties.

9. The applicants/original claimants are seeking permission to withdraw the amount deposited by the respondent insurance company in pursuance to the award passed by the Motor Accident Claims Tribunal, Dhule in MACP No.707/2020.

10. The claimants are dependents of deceased Sunil Patil, who died in the motor vehicular accident dated 17.10.2020.

His motorcycle was dashed by the insured trailer. Offence was registered against the trailer driver. The claimants are seeking compensation under section 166 of the Motor Vehicles Act against owner and insurer of the Trailer. The insurance company contested claim on the ground of contributory negligence so also quantum. The Tribunal, upon appreciation of the evidence, passed an award directing the respondent insurer to pay compensation of Rs.94,47,380/- alongwith the interest @ 9% p.a. The claimants are seeking permission to withdraw the amount.

11. Learned counsel appearing for the appellant submit that the Tribunal has not considered defence of the appellant. Two defences are raised by the insurance company. Firstly, that as to the contributory negligence on the part of the deceased and secondly, the quantum of the compensation. The Tribunal has granted excessive interest @ 9% p.a. rate which is not in accordance with the interest rates of the Nationalized Banks. According to her, the Award is excessive and exorbitant.

12. Having considered the submissions advanced, it is apparent that accidental death of the deceased is not in dispute. Defence of contributory negligence is carried forward in appeal. However, record shows that no evidence in support of such defence is lead by the insurance company. The Tribunal relying upon police papers, particularly the fact that offence was registered against driver of the Trailer passed award. So far as grant of interest @ 9% p.a. is concerned that can be considered at the time of final hearing of the appeal.

Therefore, at present, the claimants are certainly entitled for partial withdrawal of the amount. In that view of the matter, the claimants are permitted to withdraw 75% of the amount deposited with the insurance company on furnishing an usual undertaking to the satisfaction of the Registrar (Judicial) of this Court. Rest of the amount be kept in fixed deposit in any nationalized bank till disposal of the appeal. Civil application stands **disposed of**.

(S. G. CHAPALGAONKAR, J.)

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