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

**CIVIL APPLICATION NO. 12174 OF 2024
IN FA/2036/2024**

SUREKHA RAMESH KALE AND ORS
VERSUS
NEW INDIA ASSURANCE CO LTD THROUGH ITS BRANCH MANAGER AND ANR

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Mr. Bhushan Dhawale, Advocate for Applicants.
Mr. Pratap P. Mandlik, Advocate for Respondent No.1.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 13th JANUARY, 2025.

P.C.:-

1. Heard learned Advocate appearing for the respective parties.

2. By this application, applicants are praying for withdrawal of the amount deposited by the respondent/Insurance Company in pursuance to the award passed by Motor Accident Claims Tribunal in M.A.C.P. No.132/2019.

3. The applicants are original claimants. The deceased Ramesh Kale lost his life in motor vehicular accident. According to claimants, he was Headmaster in private school, which was receiving grant-in-aid. On 24.02.2017, while he was proceeding on motorcycle, he was dashed by offending vehicle, which was insured with the respondent/Insurance Company. The Tribunal assessed the compensation on the basis of last drawn salary of the deceased and passed award for Rs.38,37,000/- alongwith interest thereon.

4. The respondent/Insurance Company assailed the award passed by the Tribunal mainly on the ground of quantum contending that as on the date of accident, deceased was not in

service, as his employer had terminated his services. Later on, termination was simply withdrawn. According to Mr. Mandlik when deceased was not in service as on the date of accident, compensation ought to have been worked out based on notional income and not on the basis of last drawn salary before termination.

5. Per contra, Mr. Dhawale, learned Advocate appearing for the claimants submits that termination order was subject matter of challenge before the School Tribunal and later on, it has been withdrawn, as such, it is of no consequence while considering income of the deceased.

6. Considering submissions advanced, it can be observed that there is no dispute as regards to the accidental death involving insured vehicle. Therefore, entitlement of claimants to receive compensation cannot be questioned. Only issue as to the quantum would be subject matter of this application. In that view of the matter, when award passed by the Tribunal favour claimants, they can be permitted to withdraw 50% of the amount deposited by the Insurance Company alongwith accrued interest thereon subject to condition that claimants file undertaking to the Registrar (Judicial) of this Court that in case, any adverse order passed in Appeal they shall re-deposit amount within a period of six weeks alongwith interest @ 6% per annum. Accordingly, application is partly **allowed**.

7. The applicants are permitted to withdraw 50% amount subject to undertaking as stated above. The undertaking to be furnished within a period of four weeks from today.

8. Rest of the amount be invested in Fixed Deposit with any Nationalized Bank.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/January-2025