

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 1146 OF 2025
IN FA/3143/2024

Swati Sakharam Malande And Other

VERSUS

The New India Insurance Corrected Assurance Company Ltd Through
Its Branch Manager

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Advocate for Applicant : Mr. Chavan Narayan Yashavantrao

Advocate for Respondent : Mr. M. M. Ambhore

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CORAM : S.G. CHAPALGAONKAR, J.

DATED : APRIL 17, 2025

PER COURT :

1. Heard learned advocates appearing for the respective parties.
2. The applicants are dependents of deceased Sakharam, who died in motor vehicular accident dated 27.11.2021. According to applicants, they were dependents of deceased Sakharam. On the fateful day, a tractor bearing Registration No.MH-22-AM-4160 and trolley No.MH-22-H-8371 gave a forceful dash to the deceased. In result, he suffered fatal injuries. The claimants lodged claim for compensation vide MACP No.02 of 2022 against the owner and insurer of the offending tractor. The claim was contested by respondent no.2/insurer on the ground that the insured vehicle was not involved in the accident and there is inordinate delay in lodging the FIR. The Tribunal after considering the pleading and evidence of

the parties, concluded that the accident occurred due to involvement of insured vehicle and awarded compensation of Rs.36,62,000/- along with interest @ 6% p.a in favour of claimants. Aggrieved insurer filed the present appeal carrying forward its defence of false involvement of vehicle.

3. Mr. Ambhore, learned advocate appearing for the respondent submits that there is inordinate delay in lodging the FIR. The so-called eyewitness examined before the Tribunal is a brought up witness. His statement was never recorded. Claimants have not examined the investigating officer to prove as to how they traced out the insured vehicle.

4. Having considered the submissions advanced and reasoning adopted by the Tribunal, *prima facie*, it appears that the Tribunal recorded the finding of involvement of vehicle based on police papers, which are not controverted by respondents by leading any evidence. In that view of the matter, *prima facie*, claimants have made out a case for permitting withdrawal of amount subject to certain conditions. In the result, following order :

ORDER

- (i) Application is partly allowed.
- (ii) Claimant Nos.1, 2, 4, 5 and 6 are permitted to withdraw 50% of the compensation amount with accrued interest thereon to the extent of their share as apportioned by the Tribunal on furnishing an

(3)

undertaking to the satisfaction of the Registrar (Judicial) of this Court on the condition that, in case, adverse order is passed in appeal, they shall re-deposit the amount withdrawn.

(iii) Rest of the amount be kept in fixed deposit till further orders.

(iv) Application stands disposed of.

(v) Post the appeal for further consideration on 26.06.2025.

(S.G. CHAPALGAONKAR, J.)