



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

**70 CIVIL APPLICATION NO. 794 OF 2025
IN FA/2325/2024**

ARTI KIRAN FULARE AND ORS
VERSUS
SHANKAR RANGNATH WABALE AND ANR

...
Advocate for Applicants : Mr. M.A. Jahagirdar h/f Mr. Shaikh Sohail Yusuf

Advocate for Respondent No.2 : Mr. S. R. Bodade

...
CORAM : S. G. CHAPALGAONKAR, J.

DATE : 31st JANUARY, 2025.

P.C.:

1. Heard Mr. Jahagirdar, learned Advocate appearing for the applicants and Mr. Bodade, learned Advocate appearing for respondent no.2.

2. By this application, the applicants seek permission to withdraw the amount deposited by respondent no.2 - Insurance Company pursuant to the award dated 20th July, 2024 in M.A.C.P No.52/2021 passed by M.A.C.T., Shrirampur.

3. The applicants are the original claimants in M.A.C.P No.52/2021. They instituted claim under Section 166 of the Motor Vehicles Act claiming compensation towards accidental death of Kiran Fulare. Deceased Kiran while riding the motorcycle alleged to have dashed by tractor bearing registration No. MH-17-AE-7478 insured with respondent no.2. The incident took place on 12.02.2021, whereas the FIR has been lodged on 18.02.2021. In that view of the matter, Insurance company refuted the claim on the ground of false implication of the insured vehicle and in alternative contributory negligence of the deceased so also on the point of quantum of compensation. The

Tribunal after evaluation of the evidence allowed the claim and passed the award for Rs.28,05,600/- in favour of the claimants.

4. The aggrieved insurer filed present appeal and carried forward its defence as raised before the Tribunal. Mr. Bodade, learned Advocate appearing for respondent no.2 vehemently opposed the application pointing out the delay in lodging the F.I.R. He would also contend that the assessment of compensation is excessive and without acceptable reasons. Having considered the submissions advanced and reasonings as adopted by the Tribunal, it can be observed that the MLC was recorded on the same day of the accident. True that there is no reference as to the vehicle involved in the accident, later on after due investigation the charge-sheet was filed against the tractor driver. The claimants examined the eye witness of the accident. Tribunal accepted the case of the claimants on the basis of plausible evidence and passed the award. The issues as raised in the appeal can be considered at the time of final hearing. However, at this stage, the claimants are certainly entitle to partial withdrawal of the amount of compensation subject to certain conditions. Hence, the following order:-

ORDER

- (i) Civil Application is partly allowed.
- (ii) The applicants are permitted to withdraw 50% of the compensation amount along with accrued interest thereon subject to condition that they shall file an undertaking to the satisfaction of the Registrar (Judicial) of this Court that they shall redeposit the amount in case adverse order is passed in appeal. The amount falling to the share of minor claimants be kept in fixed deposit. The balance of amount be also kept in fixed deposit with any nationalized bank.
- (iii) The disbursement of the amount shall be in proportionate to the apportionment made under the award of the Tribunal.

(iv) The civil application stands disposed off.

[S. G. CHAPALGAONKAR, J.]

sga