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

**CIVIL APPLICATION NO. 12422 OF 2024
IN FA/2847/2024**

SUJATA SURESH BHOSALE AND ORS
VERSUS
THE BRANCH MANAGER IFFO TOKIO GENERAL
INSURANCE CO LTD AND ORS

...

Mr. Prasanna Shankarrao Chavan, Advocate for Applicants.
Mr. Swapnil S. Rathi, Advocate for Respondent No.1.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 29th JANUARY, 2025.**

P.C.:-

1. By this application, the applicants seeks permission to withdraw the amount deposited by respondent/insurance company in pursuance to the Award passed under Section 166 of the Motor Vehicle Act in M.A.C.P. NO.152/2015 by the Motor Accident Claims Tribunal, Osmanabad.

2. The applicants are original claimants. They instituted claim for compensation towards accidental death of Suresh Ramchandra Bhosale involving Bolero Jeep bearing Registration No.MH-25-R-0821. The respondent/insurer of the Jeep contested claim on the ground that insurance policy in relation to the Jeep in question was canceled 10 months prior to the date of accident and cancellation of policy was duly communicated to the insurer as well as Registering Authority. The Tribunal, after evaluating the evidence, accepted the insurer's defense regarding the cancellation of the policy. However, passed Award in the nature of pay and recovery relying upon the judgment of the Supreme Court of India, most of which deals with the aspect of breach of policy. The aggrieved insurer, therefore, preferred Appeal assailed Award passed by the Tribunal

on the ground that Tribunal could not have passed Award in the nature of pay and recovery once defence regarding cancellation of policy accepted.

3. Mr. Chavan, learned Advocate appearing for the applicant endeavours to contend that infact cancellation of insurance policy is not valid. The evidence on record is not sufficient to prove that there was valid service of notice as to the cancellation of insurance policy upon owner of vehicle. He submits that electronic documents are placed on record, which are not supported by certificate under Section 65-B of the Evidence Act. As such, that cannot be accepted as valid evidence. Mr. Chavan would, therefore, seeks permission to withdraw amount deposited by insurer.

4. Having considered submissions advanced, apparently Tribunal found entitlement of claimants to receive compensation in pursuance to the motor vehicular accident involving Bolero Jeep. The Tribunal has also upheld entitlement of claimants to receive compensation from insurer, although right is given to them to recover the compensation from insurer. In this background, claimants are entitled for partial withdrawal of compensation amount, but subject to such condition, that would protect interest of insurer. In that view of the matter, following order is passed:

ORDER

a. Civil Application is partly allowed.

b. The applicants are permitted to withdraw 25% of the amount deposited by insurer alongwith accrued interest thereon subject to condition that he files usual undertaking with the Registrar (Judicial) of this Court that in case adverse order is passed in

Appeal, they shall redeposit the amount within a period of eight weeks.

c. In addition to that, they shall furnish a solvent surety/security, to the satisfaction of the Registrar (Judicial) of this Court, for the amount withdrawn.

d. The disbursement of the amount shall be in proportion to the apportionment under Award of the Tribunal.

e. Post the Appeal for further consideration on 26.02.2025.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/January-2025