IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

Civil Application No.15513 of 2015
In
First Appeal Stamp No. 24901 of 2014

Kamil s/o. Banemiya Shaikh. .. **Applicant.**

Versus

Bajaj Allianz General Insurance
Company Ltd. Pune & Another. .. **Respondents.**

Shri. Naseem, R. Shaikh, Advocate, for applicant.

Shri. S.G. Chapalgaonkar, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 10th FEBRUARY 2016

ORDER:

1) The application is filed by the original claimant for permission to withdraw the amount deposited by the appellant-insurance company. Both the sides are heard.

2) The insurance company has challenged decision of the Tribunal and it wants to show that there was contributory negligence in the accident and the accident took place due to fault of the claimant. In the Tribunal respondent No.1 rider has contested the matter

by filing written statement but he did not step into witness box. The claimant has proved the spot panchanama by examining a panch witness on spot panchanama. The insurance company wants to prove on the basis of the record, charge sheet filed against the claimant, that he was negligent. Admittedly no substantive evidence in rebuttal is given by the insurance company to prove the negligence or contributory negligence of the claimant. Learned counsel for the insurance company has placed reliance on a case reported as **2007 AIR SCW 3591 (Oriental Insurance Co. Ltd. v. Premlata Shukla)**. Facts and circumstances and each and every case are always different.

3) In view of the circumstances of the present matter this Court holds that permission needs to be granted to the claimant to withdraw the amount. In the result, the application is allowed. Amount is allowed to be withdrawn subject to giving usual undertaking.

Sd/-
(T.V. NALAWADE, J.)

rsl