

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL APPLICATION (F) NO. 1265 OF 2016

IN

CIVIL APPLICATION (F) NO.1233 OF 2016

IN

FIRST APPEAL NO.228 OF 1999 (D)

(Qumar Bano wd/o Haidar Ali Khan and others ..vs.. Maharashtra State Road Transport Corporation,
Gadchiroli and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 29-04-2016

Heard Smt. Mrunal Naik, Advocate for the respondent No.3, Shri Asghar Hussain, Advocate for the appellants and Shri V.H. Kedar, Advocate for the respondent No.1.

None appears for the respondent No.2.

For the reasons stated in the application, the delay in filing the application praying for modification of the judgment dated 05-03-2015 is condoned.

The civil application is allowed.

Civil Application (F) No.1233 of 2016.

Heard.

2. The respondent No.3-Oriental Insurance Company Ltd. has filed this application seeking modification of the Judgment dated 05-03-2015 and

praying that the liability to pay compensation to the claimants be apportioned.

3. This Court, by the judgment dated 05-03-2015, concluded that the respondents i.e. Maharashtra State Road Transport Corporation, Sub-Area Manager, Western Coalfields Limited, Umred and Oriental Insurance Co. Ltd. are jointly and severally liable to pay the amount of compensation.

The learned Advocate for the respondent No.3 has submitted that there was no contractual liability between the respondent No.1-Maharashtra State Road Transport Corporation and the respondent No.3-Oriental Insurance Company Ltd. and therefore, as per the award passed by the Motor Accident Claims Tribunal, the respondent No.1-Maharashtra State Road Transport Corporation is liable to pay 50% of the amount of compensation. It is prayed that the judgment passed by this Court may be modified to the above extent.

4. Shri Asghar Hussain, Advocate for the appellants/claimants has referred to the judgment given by the Hon'ble Supreme Court in the case of *Khenyei vs. New India Assurance Co.Ltd. and others* reported in **2015(9) SCC 273** and has submitted that the apportionment of liability of payment of compensation is only for the purposes of determining the *inter se* liability

of joint tort feasons and it does not affect the entitlement of the claimants to recover the amount of compensation from any one of the joint tort feasons, if the liability is fixed jointly and severally. It is further submitted that it is open to the Court to determine the liability of each of the joint tort feason, however, it is only for the purposes of fixing the *inter se* liability of the joint tort feasons.

Considering the proposition laid down in paragraph No.18 of the above referred judgment, the submissions made on behalf of the respondent No.3 cannot be accepted.

5. The civil application is dismissed with costs of Rs.5,000/- to be paid by the respondent No.3 to the appellants/claimants within two months. The amount of costs shall be equally apportioned amongst the original appellants.

JUDGE