

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

CIVIL APPLICATION NO. 2375 OF 2017
IN FAST/4922/2017
WITH
CA/2376/2017 IN FAST/4922/2017

THE NEW INDIA ASSURANCE CO. LTD THR ITS DIV.
MANAGER,AURANGABAD
VERSUS
SHIVAJI FAKIRRAO KALE AND ORS

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Advocate for Applicant : Mr D P Deshpande

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CORAM : V.K. JADHAV, J.
Dated: March 08, 2017

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PER COURT :-

1. Heard the learned counsel for the applicant on application for condonation of delay, however, none present for the respondent nos. 1 to 4 original claimants.

2. For the reasons stated in the application, delay of 15 days caused in filing the first appeal is hereby condoned. Civil application for delay accordingly disposed of.

3. In appeal as well as stay application, issue notice to the respondents, returnable on 3.5.2017. Call Record and Proceeding.

4. Learned counsel for the applicant submits that, though the applicant insurer has raised the defence about

travelling in a goods carrying commercial vehicle, the Tribunal has not considered the same and awarded the compensation. The learned Member of the Tribunal has recorded finding about composite negligence of the drivers of both the vehicles, however, failed to determine the *interse* liability amongst joint tort feasors. Learned counsel submits that, in view of the same, the applicant may be permitted to deposit 50% of the amount awarded by the Tribunal.

5. In view of the above submissions and since the Tribunal has failed to fix th *interse* liability amongst joint tort feasors, the applicant herein is permitted to deposit 50% of the amount under award alongwith interest within four weeks from today. Thus, the effect, execution and implementation of the impugned judgment and award is hereby stayed on the condition that, the applicant shall deposit 50% of the amount under award alongwith interest, within four weeks from today, in this court, failing which, stay granted by this order, shall stand vacated automatically without further reference to the Court.

(V.K. JADHAV, J.)

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aaa/-