

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 5723 OF 2017
IN
FIRST APPEAL NO. 650 OF 2017

AYYUBKHAN DILAWARKHAN PATHAN
VERSUS
THE LEGAL MANAGER, RELIANCE GENERAL INSURANCE CO. LTD.
AURANGABAD AND ANOTHER

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Advocate for the applicant: Mr. Shaikh M.A. Jahagirdar
Advocate for respondent No.1: Mr. S .S. Patil
Advocate for respondent No.2:Mr. C.V. Bhadane

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CORAM : V. K. JADHAV, J.
DATED : 5th JULY, 2017

PER COURT:-

1. Heard both sides.
2. Learned counsel for the respondent insurer submits that the present applicant has filed claim petition under Section 163-A of the Motor Vehicles Act 1988. Out of the same accident, injured claimant Hemant had also filed M.A.C.P. No. 78 of 2014 against the both the joint tort feasons and the Tribunal has held that it is case of composite negligence and fixed interse liability in proportion of 70% against the driver of Omni car i.e. applicant herein and 30% to the extent of driver of the truck. Learned counsel submits that the respondent insurer has also preferred an appeal against the said judgment and award passed by the Tribunal in M.A.C.P. No. 78 of 2014 bearing first appeal No. 243 of 2017

and the same is pending before this court. Learned counsel submits that in view of same, the applicant may not be permitted to withdraw the compensation deposited before this court. Learned counsel in the alternate submits that at the most the applicant may be permitted to withdraw 30% of the amount as per interse liability decided by the Tribunal in M.A.C.P. No. 78 of 2014.

3. Learned counsel for the applicant submits that the applicant has preferred claim petition under Section 163-A and as such other side is precluded from raising defence of fault liability. The applicant is therefore, entitled to withdraw entire amount deposited before this court.

4. Considering the above submission and since the Tribunal has decided interse liability of joint tortfeasors in M.A.C.P. No. 78 of 2014 against which first appeal No. 243 of 2017 is filed and the same is pending before this court, the applicant is permitted to withdraw 30% of the amount out of the amount deposited before this court on furnishing undertaking to the satisfaction of Registrar (Judicial) of this court. Civil application is disposed of.

(V. K. JADHAV, J.)

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