

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

**986 CIVIL APPLICATION NO.7523 OF 2019
IN FA/1042/2019**

**RAJESH BABULAL DESAR
VERSUS
THE NEW INDIA INSURANCE CO. LTD., AND ORS**

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Advocate for Applicant : Mr. Deshpande Amit S.
Advocate for Respondent No.1 : Mr. D.P. Deshpande
Advocate for Respondent No.3 : Mr. S.S. Dargad h/f Mr. S.G.
Chapalgaonkar

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 13th SEPTEMBER, 2019.

ORDER :

. Present application has been filed by the original claimant for withdrawal of the amount. Amount of Rs.4,64,912/- has been deposited towards the award by respondent No.1. Learned Advocate for respondent No.1 submits that the appeal has been filed on the ground of contributory negligence and then it is stated that when the claimant himself was negligent to the extent of 50%, the application under Section 166 of the Motor Vehicles Act was not maintainable.

2. At this stage, a competent Court has come to a conclusion and passed the award holding the insurance company responsible jointly and severally to pay the amount of compensation. Under such circumstance, case is made out for partial withdrawal of the amount.

3. Further taking into consideration the points of appeal, those have been raised, the applicant is allowed to withdraw amount of Rs.2,00,000/- subject to filing an undertaking that he would make the said amount good, if directed at the time of final disposal of the appeal.

4. Civil Application stands disposed of accordingly.

(SMT. VIBHA KANKANWADI, J.)

SCM