

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

First Appeal No. 265/2018

IFCO-Tokyo General Insurance Co. Ltd.

-VERSUS-

Mohd. Khwaja Shaik Ratheman and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri D.N. Kukday, Advocate for appellant.
Shri S.A. Mohta, Advocate for respondent No. 3.

CORAM : VINAY JOSHI, J.

DATE : DECEMBER 16, 2019.

The learned counsel for respondent No. 3 orally seeks permission to withdraw amount of compensation. Heard the learned counsel for respondent No. 3.

2. This appeal is heard and dismissed on merit vide judgment and order dated 03.10.2019. It is a case of involvement of two vehicles. The learned Tribunal has fastened entire liability jointly and severally on the driver, owner and insurer of offending

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truck. In first appeal filed by the insurer of truck, this Court held on merit that it is a case of composite negligence and the appeal is partly allowed.

3. During the pendency of appeal, the entire compensation amount along with accrued interest is deposited by appellant i.e. insurer of truck. Though this Court held that appellant is liable to pay compensation to the extent of 75%, however, already entire amount of compensation is deposited. In any way, the claimants are entitled for total compensation from either of the Insurance Company. In view of that oral request of learned counsel for respondent No. 3 is allowed and accordingly he is permitted to withdraw the entire balance amount of compensation along with accrued interest. Certainly, the appellant is at liberty to recover excess payment made by him as has been quantified and saddled by this Court on another driver, owner and insurer i.e. offending Omni Van.

4. He also requested to transfer compensation amount to Motor Accident Claims Tribunal, Akola since respondent 3 is physically

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challenged and unable to move. Taking into account said special feature, the Registrar of this Court is directed to transfer balance amount to Motor Accident Claims Tribunal, Akola who in turn permit the respondent No. 3 to withdraw the same.

JUDGE

Gohane.