

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO. 4458 OF 2019
IN
FIRST APPEAL NO. 791 OF 2017

Shriram General Insurance Co. Ltd.
..vs..
Rameshwar s/o Mahadev Pachade and ors.

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

Court's or Judge's orders

Shri P.N. Khadgi, Advocate for appellant.
Shri U.J. Deshpande, Advocate for respondent nos. 1 and 2.

CORAM : VINAY JOSHI, J.
DATED : 17th DECEMBER, 2019

Heard.

2. Respondent nos. 1 and 2 who are the original claimants are seeking for withdrawal of compensation amount. It is stated that respondent no. 1 is suffering from certain ailment for which documents are produced alongwith application.
3. Considering the need, the respondent nos. 1 and 2 have moved this application seeking for withdrawal of entire compensation amount. Learned Counsel for appellant-Insurer resisted this application by stating that already 50% amount i.e. Rs.4,00,000/- was allowed to be returned by this Court and accordingly disbursed.
4. It is appellants' stand that the accident is out come of contributory negligence and therefore, the Tribunal was wrong in fastening entire liability on the

owner and insurer of Truck. Perusal of impugned judgment shows that deceased was driving the Ambulance which has dashed with a moving Truck. No doubt, there appears to be collusion in between two vehicles, but, the Tribunal on assessing facts has recorded positive finding that, the accident occurred due to sole negligence of Truck driver. Always it is not necessary to hold that it is a case of contributory negligence, when there was accident in between two vehicles. Always it differs from case to case, solely based on the evidence.

5. Considering the medical need as well as the grounds of challenge, the applicants are permitted to withdraw further amount of Rs.2,50,000/- on furnishing necessary undertaking before the Registrar(Judicial) of this Court.
6. Civil Application is disposed accordingly.

JUDGE

Trupti