

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

**FIRST APPEAL NO. 480 OF 2010
WITH
CIVIL APPLICATION NO. 3438 OF 2015
CIVIL APPLICATION NO. 1770 OF 2015
CIVIL APPLICATION NO.2445 OF 2010**

Pawan s/o Gulchand Musale,
Age: 32 years, Occ: Business,
R/o. Gandhora, Tq. Tuljapur,
Dist. Osmanabad.

...Appellant

versus

1. The Manager,
I.C.I.C.I. Lombard General
Insurance Company Ltd.,
I.C.I.C.I. Bank Towers,
Bandra-Kurla Complex,
Mumbai-400 051.
2. The Oriental Insurance Company
Limited, Through its Branch
Manager, 26/138, S.B.I. Building,
Near S.T. Stand, Osmanabad.
3. Laxmibai w/o Biru Sontakke,
Age: 42 years, Occ: Labour,
R/o. Gandhora, Tq. Tuljapur,
Dist. Osmanabad.
4. Biru s/o Pandurang Sontakke
(Died, hence deleted as per
order below Ex.50)
5. Chandrakant s/o Biru Sontakke,
Age: 18 years, Occ: Nil,
R/o. Gondhara, Tq. Tuljapur,
Dist. Osmanabad.

...Respondents

.....

Mr. Sushant B. Choudhari, Advocate for appellant
Mr. J.G. Chitnis, Advocate for respondent No. 2
Mr. K.S. Bhore, Advocate for respondent Nos.3 & 5

.....

CORAM : N.W. SAMBRE, J.

DATE : 13th JULY, 2015

ORAL ORDER :

Present appeal is by original respondent No.1 to the Motor Accident Claim Petition No. 54 of 2007 decided by the Motor Accident Claims Tribunal, Osmanabad on 15/10/2009.

2. A few facts, as are necessary, for deciding the present appeal, are as under :

The claimants have brought into action Motor Accident Claim Petition No. 54 of 2007 alleging therein that, Suryakant, who was at the age of 22, died because of the accident of Auto Rickshaw driven by respondent No.1 to the claim petition, which was insured with respondent Nos. 2 and 3.

3. The claim petition was resisted by respondent Nos. 2 and 3 Insurance Companies. Respondent No.2 Insurance Company though admitted insurance of the vehicle from 16/12/2006 to 15/12/2007 and with respondent No.3 from 06/11/2006 to 05/11/2007, however denied their liability to pay on the ground of

rash and negligent driving of vehicle driver, so also violation of terms of the policy.

4. The claim was to the tune of Rs. 4,00,000/-. Based on the evidence that was brought on record, the tribunal has allowed the claim to the extent of Rs. 50,000/- towards No Fault Liability and Rs. 4,00,000/- including the said No Fault Liability amount, which shall carry interest @ 7.5% p.a. in favour of the appellant. It is observed that the amount of compensation be paid by respondent No.1 vehicle owner and respondent Nos. 2 and 3 were absolved of their liability. The cause cited in the judgment for absolving their liability was; deceased Suryakant was travelling in Auto Rickshaw in what capacity and driver was not having any driving licence.

5. At the stage of hearing of appeal, learned Counsel for respondent No.1 to the claim petition and appellant herein has moved an application bearing Civil Application No. 3438 of 2015 under the provisions of Order 41 Rule 27 of Civil Procedure Code for producing a driving licence bearing No. MH25/12-06/5533 which was issued on 13/12/2006 in favour of Pawan Gulchand Musale. The accident in question occurred on 26/12/2006 and as such, same being copy of the document issued by R.T.O. authorities, in my opinion, at this stage *prima facie* required to be believed unless

contrary is proved.

6. Mr. Bhore, learned Counsel for respondent Nos. 3 and 5 supported the prayer for remand and urged that matter be expedited.

7. It will be appropriate in the interest of justice, in my opinion, to allow the said application, so also present appeal by remanding the matter back to the learned Motor Accident Claims Tribunal, Osmanabad, who is required to permit respondent No.1 before it to lead evidence in support of the contention that the driver of the vehicle at the relevant time was holding valid licence.

8. The reason cited in the application for production of the said document under the provisions of Order 41 Rule 27 of the Code of Civil Procedure is the document at the relevant time that was available, however, same could not be placed on record in view of inaction on the part of lawyer.

9. Be that as it may, in my opinion, present first appeal, being continuation of suit, it will be appropriate to give opportunity to the present appellant to lead additional evidence before the tribunal. As such, the judgment delivered by the tribunal in Motor Accident Claim Petition No. 54 of 2007 decided on 15/10/2009, is hereby set

aside. The claim petition stands restored to the file of Motor Accident Claims Tribunal, Osmanabad. The present appellant-respondent No.1 to the claim petition will be at liberty to lead evidence in support of his claim for production of driving licence.

10. Learned tribunal is directed to decide the claim petition, as expeditiously as possible, and in any case within period of three months from the date of appearance of parties to the claim petition. The parties hereto agree that they shall appear before the tribunal on 07/08/2015 and shall co-operate the tribunal in deciding the appeal.

11. The amount, if any, deposited in this Court, be forthwith remitted back to the claims tribunal, who shall take appropriate decision of the withdrawal of the same.

12. The first appeal stands disposed in above terms.

13. In view of final disposal of the first appeal, pending civil applications stand disposed of.

[N.W. SAMBRE, J.]