**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO.188 of 2015**

Mr. Gerson Menezes,
major of age, resident of
H. No.382, near old
post office, Caranzalem,
Panaji-Goa .. Petitioner

Versus

1. Miss. Greeta Fernandes,
major of age, C/o. Mr. Reginald
Fernandes, near Old Post Office,
Caranzalem, Panaji-Goa.

2. Miss. Machada Cabral
major of age, resident of
C/o. Mrs. Rosy Cabral,
Post Office, N.I.O.,
Opp. State Bank of India,
Dona Paula- Goa.

3. Mr. Benny Braganza,
major of age, resident of
C/o. Mr. Alex Braganza,
House No.251/2,
Moloca Waddo, Merces,
Tiswadi-Goa.

4. Mr. Ivo Braganza,
major of age, resident of
C/o. Mr. Alex Braganza,
House No.251/2, Moloca
Waddo, Merces, Tiswadi-Goa

5. HDFC Chubb.
General Insurance Company,
Landmark Insurance,
Advisory Services,
Minum Residency, 4th Floor,
above HDFC Bank,
18th June Road, Panaji-403 001. .. Respondents

Shri Ressano Hector Noronha, Advocate for the petitioner.

**CORAM** :- **C. V. BHADANG, J.**

**Date : 3rd September, 2015.**

**ORAL JUDGMENT :**

On 03/08/2015, a notice for final disposal was issued in this case. None appears for the respondents, though served. The petition is accordingly being disposed of finally.

3. The petitioner, who is the claimant before the Motor Accident Claims Tribunal, is challenging the order dated 03/02/2015 passed by the Presiding Officer, Motor Accident Claims Tribunal, Panaji, whereby the application filed by the petitioner for recall of the witness RW1 Mr. Vivek Karne, the Assistant Manger of the original respondent no.5, Insurance Company, has been rejected.

4. Brief facts are that a minor daughter of the petitioner, who was a pillion rider on a motorcycle, died in an accident, which led the petitioner to file Claim Petition for compensation. In that case, RW1 Vivek Karne was examined on behalf of the respondent no.5, Insurance Company on the point that the concerned policy

does not cover the risk of a pillion rider. RW1 also states that the rider of the vehicle as well as the pillion rider were minors and as such, were not authorised to drive the vehicle. He further states that being minors they were disqualified for holding a valid driving licence. He further states that the vehicle was driven in breach of the terms and conditions of policy, on account of which, the Insurance Company is not liable to indemnify the insurer or to pay compensation.

5. The learned Presiding Officer of the Claims Tribunal has found that the evidence of RW1 was recorded partly on 27/09/2013 and thereafter, was closed on 08/10/2013, without cross-examination on behalf of the petitioner/ claimant. It was found that no steps were taken by the petitioner from 08/10/2013 to apply for recall of the witness till 03/02/2015, when the petition was fixed for final arguments. In that view of the matter, the application came to be rejected.

6. I have heard Shri Noronha, the learned Counsel for the petitioner.

7. It is true that the petitioner has not acted diligently in seeking recall of the witness as the evidence of the witness was

closed on 08/10/2013 and the application for recall came to be made belatedly on 03/02/2015. However, the question is whether merely on such ground the permission to recall the witness could have been refused. In a petition under Section 188 of the M. V. Act, the Claims Tribunal is obliged to determine 'just compensation' in respect of the death or permanent disablement caused in the accident arising out of the use of motor vehicle. Strict rules of procedure, including the Evidence Act, do not apply. It is in the nature of an enquiry, which the Tribunal is expected to conduct and arrive at an amount of just compensation. While deciding the prayer for recall, the ground of necessity of such recall has also to be looked into. Thus, the fact whether the vehicle was covered by policy of Insurance, which was valid as on the date of accident as also whether in terms of the conditions of policy, the insurer would be liable to indemnify the owner and pay compensation, are relevant aspects, to be gone into. A perusal of the evidence of RW1 would show that the said witness has deposed on material aspects as to the alleged non-coverage of the risk of pillion rider under the policy as also some breach of policy conditions. These aspects are relevant and material, in order to decide the issues involved in the petition. In such circumstances, notwithstanding the fact that the petitioner has not sought recall of the witness promptly and has sought it at the stage when the petition was fixed for arguments, I find that in the interest of justice and for deciding the real controversy in the matter, including an important issue about coverage of insurance, the application needs to be granted. The learned Presiding Officer of the Tribunal has only gone on the issue of delay in seeking recall and the impugned order does not show that the Tribunal has adverted to the aspect, whether such recall would be necessitated, having regard to the issues involved. Having regard to the fact that the petitioner is a claimant before the Claims Tribunal, who has lost his minor daughter, I do not find it appropriate to impose any costs on the petitioner as a condition for such recall.

8. In that view of the matter, the following order is passed :

(i) The petition is allowed.

(ii) The impugned order is hereby set aside.

(iii)The application for recall filed by the petitioner is allowed.

(iv) The learned Tribunal shall recall the witness for cross-examination on behalf of the claimant/ petitioner.

(v) The petitioner shall ensure that the witness is cross-examined on the date on which he remains present, without fail.

(vi) The parties to appear before the Tribunal on 08/09/2015.

(vii) The witness shall be recalled on such date as may be fixed by the Tribunal.

(viii) Rule is made absolute in the aforesaid terms, with no order as to costs.

**C. V. BHADANG, J.**

SMA