

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2535 OF 2013  
IN  
FIRST APPEAL NO.122 OF 2012**

1. Smt. Balabai Bapu Patil  
Age 41 occ. Household  
Resident of Ameni,  
Tal. Shahuwadi, Dist. Kolhapur

2. Priyanka Bapu Patil  
Age 15 years, occ. Nil  
Through No.1 as minor  
Resident of Ameni,  
Tal. Shahuwadi, Dist. Kolhapur

.. Applicants

**VERSUS**

1. Bapu Anant Mane (deleted)

2. Sanjay Dattatray Mhapsekar  
Major, occ. Owner  
R/o. Bazar Peth, Telebazar  
Tal. Devgad, Dist. Sindhudurg

3. United Indira Insurance  
Br. Ratnagiri, through Station Road,  
Branch-Kolhapur.

.. Respondents

Mr. S.G. Thorat for Applicants.

Ms. Varsha Chavan for Respondent No.3.

**CORAM : MRS. MRIDULA BHATKAR J.  
DATED : NOVEMBER 18, 2015.**

**P.C. :**

. This First Appeal is taken up for admission at the time of  
hearing of the matter. It is contended by the learned Counsel for the

Appellants that the application under Order 41 Rule 27 of the Civil Procedure Code for recording the evidence pending the appeal is moved by him. This application was moved by the claimants who are widow and erstwhile minor daughter. The accident has occurred on 17 May 1996. The deceased was a pillion rider on M-80 and M-80 dashed on the rear side of the truck. Hence, the learned President, Motor Accident Claims Tribunal, Kolhapur held that a driver of M-80 was negligent and dismissed the claim by his judgment and order dated 5 February 2004.

2           The learned Counsel appearing for the Appellants submitted that the appellants did not examined two eye witnesses, one riding the M-80 and one another who was pillion rider. However, now those persons are ready to give the evidence and he found addresses of those persons.

3           The learned Counsel appearing for Respondent No.3- Insurance Company, who is main contesting party has opposed this application and has submitted that the applicants did not make driver of M-80 and it's Insurance Company as party Respondents in the claim petition and accordingly, the learned President, Motor Accident

Claims Tribunal, Kolhapur has made observation on this aspect. She further submitted that the learned President, Motor Accident Claims Tribunal, Kolhapur has relied upon the spot panchnama and also report of the truck driver on the basis of which an accident was construed and driver of M-80 was held responsible as negligent.

4           On perusal of judgment and on hearing the submissions of the learned Counsel of the both parties, I am of the view that the eye witnesses, who was rider of M-80 and another pillion rider on M-80 are necessary witnesses, they can throw light as to how actual impact has taken place. Though the impact was on the rear side of the truck, it is necessary to find out how it happened and opportunity needs to be given to the claimants to prove their claim. Whether the driver of M-80 was the negligent or whether it can be a case of negligent parking of the truck without rear side lights, these facts required to be ascertained only after recording the evidence of the eye witnesses. I, therefore, remand this matter to the President, Motor Accident Claims Tribunal, Kolhapur. The written statement and evidence of other witnesses are available for the Presiding Officer. Only the evidence of eye witnesses- two or one is to be recorded and opportunity to cross examination of those witnesses is

to be given to the Respondents. The names of the eye witnesses are mentioned in this application as (i) Shri Bhagwan Dyandev Kumbhar, age 40, occ. Contractor, Residing At. Kapashi, Tal. Shahuwadi, Dist. Kolhapur and (ii) Shri Bhimrav Keshav Kamble, age 60, occ. Agriculture, Residing At. Sarud, Tal. Shahuwadi, Dist. Kolhapur.

5                      With this, I pass the following order.

**: O R D E R :**

- (1) The Judgment and Award dated 5 February 2004 is hereby set aside and the matter is remanded to the President, Motor Accident Claims Tribunal, Kolhapur;
- (2) Evidence which is recorded earlier is to be read and appreciated;
- (3) The extra evidence of eye witnesses if produced, is to be recorded;
- (4) The Appellants/Applicants shall not claim the interest on compensation, if any, awarded in favour of the Appellants/Applicants from 5 February 2004 till the final disposal of this appeal by President, Motor Accident Claims Tribunal, Kolhapur;

- (5) President, Motor Accident Claims Tribunal, Kolhapur to record the evidence and hear the submissions on that point and to give the decision by 29 February 2016;
- (6) Parties to act on the basis of authenticated copy of this order;
- (7) Parties to appear before the President, Motor Accident Claims Tribunal, Kolhapur alongwith the authenticated copy of this order;
- (8) The learned President, Motor Accident Claims Tribunal, Kolhapur to proceed on the basis of that copy;
- (9) Records and Proceedings be sent back to the President, Motor Accident Claims Tribunal, Kolhapur;
- (10) Civil Application is disposed of accordingly.

**(MRS. MRIDULA BHATKAR, J.)**