

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 51 OF 2016

Shri Vicky Vasant Amolik,
 Age: 24 years, Occ: Nil,
 R/o Belapur (Bk.) Tq. Shrirampur,
 Dist. Ahmednagar. ... Appellant

Vs.

1. Shri Anand Nandkishor Dayma,
 Age: Major, Occ: Business,
 R/o Belapur (Bk.) Tq. Shrirampur,
 Dist. Ahmednagar.
2. Shri Kiran Ravindra Gangwal,
 Age: Major, Occ: Owner,
 R/o Belapur (Bk.) Tq. Shrirampur,
 Dist. Ahmednagar.
3. The Manager,
 The New India Assurance Co. Ltd.,
 Parag Building, Shivaji Corss Road,
 Shrirampur, Dist. Ahmednagar. ... Respondents

Mr. Tambe Rahul A., Advocate for the Appellant.
 Mr. S.S. Rathi, Advocate for respondent no.3.

CORAM : P.R. BORA, J.
DATE : 21-11-2016.

ORAL JUDGMENT :

1. With consent of the learned counsel appearing for the parties, the present appeal is finally heard at the admission stage. The judgment and order passed by the Member, Motor Accident Claims Tribunal at Shrirampur on 21.09.2015 in M.A.C.P. No. 311 of 2012 is challenged in the present appeal.

2. The aforesaid claim petition was filed by the present appellant seeking compensation on account of the injuries caused to him in a vehicular accident happened on 17.11.2012 having involvement of a motor cycle owned by present respondent no.2 and insured with present respondent no.3. The aforesaid claim petition has been dismissed by the tribunal mainly for the reason that the claimant-petitioner did not examine himself and also did not examined any other witness in order substantiate the contentions raised in the petition.

3. The learned counsel for the appellant submitted that, the learned counsel who was appearing for the appellant before the tribunal expired during the pendency of the aforesaid claim petition on 28.01.2015. The learned counsel has tendered across the bar the xerox copy of the death certificate of the said counsel namely S. Ajit Gandhi. The learned counsel further submitted that, the fact that his counsel has expired was not within the knowledge of the present appellant and obviously there were no further instructions to the appellant from his lawyer as about the progress of the claim petition before the tribunal. The learned counsel submitted that, in such circumstances the appellant could not appear before the tribunal and also could not adduce any evidence on his behalf. The learned counsel submitted that, since the claim petition filed by the present appellant has been dismissed for want of evidence from his

side, an opportunity needs to be given to the present appellant to adduce evidence on his behalf to prove his claim before the tribunal. The learned counsel submitted that, the appellant did not appear before the tribunal only for the reason that there was no instructions from his lawyer in that regard and he was not aware about of the fact that his counsel has died during pendency of the claim petition. The learned counsel has, therefore, prayed for remand of the matter with direction to the learned tribunal to permit the present appellant to adduce necessary evidence on his behalf.

4. Shri S.S. Rathi, the learned counsel appearing for respondent no.3, insurance company submitted that it was the duty of the appellant to be vigilant as about the progress in the claim petition filed by him before the tribunal. The learned counsel submitted that, the appellant was negligent in prosecuting his claim and his negligence cannot be awarded by remanding the matter and by permitting him to adduce evidence on his behalf. The learned counsel, therefore, prayed for dismissal of the appeal.

5. I have carefully considered the submissions advanced by the learned counsel appearing for the respective parties. On perusal of the judgment it is revealed that, the tribunal has dismissed the petition filed by the present appellant only on the ground that there was no oral evidence on behalf of the petitioner

nor any other witness was examined by him. Having regard to the fact that the counsel who was appearing for the present appellant expired during the pendency of the claim petition and in absence of any contrary evidence showing that the aforesaid fact was well within the knowledge of the present appellant, there is every reason to believe that the present appellant may not be knowing about the dates in the claim petition before the tribunal. Normally the petitioner is not supposed to attend each and every date before the tribunal and his presence is required for adducing his evidence or at the time of hearing of the petition. In absence of any evidence on record that in spite of having knowledge that the petition is placed for hearing the appellant did remain absent, it appears to me that an opportunity needs to be given to the appellant to substantiate his claim by permitting him to adduce his evidence before the tribunal and also to examine the necessary witnesses to support the contentions raised by him in the petition. I am therefore, inclined to pass the following order.

ORDER

- i) The judgment and order dated 21.09.2015 passed in M.A.C.P. No. 311 of 2012 by Motor Accident Claims Tribunal, Shrirampur is quashed and set aside.
- ii) Consequently, the aforesaid claim petition stands restored to its original file for deciding it afresh.

- iii) The Tribunal shall permit the present petitioner to adduce his own evidence and to examine the necessary witnesses in support of his claim.
- iv) It would also be open for the respondents to adduce evidence on their behalf, if they so desire.
- v) The appeal, thus, stands allowed in the aforesaid terms.

(P.R. BORA)
JUDGE