

IN THE HIGH COURT OF BOMBAY AT GOA.**MISC. CIVIL APPLICATION NO. 809/2012****IN****FIRST APPEAL 109 OF 2012****WITH****FIRST APPEAL NO. 109/2012.**

1. Shri Siddhu Babu Varak,
Son of Late Shri Babu Varak,
Aged 64 years, retired
2. Smt. Savitri Siddhu Varak
Wife of Shri Siddhu Varak,
Aged 56 years, housewife,
Both residents of H. No.462,
Khutwal, Alorna, Taluka Pernem, Goa. ...Appellants/Applicants

Versus

1. Shri Navnath Kaluram Bombale,
Son of Kalura Chawale,
major of age, R/o B-19-18,
Worli Police Camp,
Worli, Mumbai-18.
2. Shri. Sandeep Namdev Kad,
Major of age, R/o Rajguru Nagar
A/p Waki(Budruk), Tal-khed,
Dist.pune, Maharashtra, 410505.
- 3 The New India Assurance Co.ltd.,
Through its's Branch Manager
Having its office at Rajguru Nagar
(151607) Karnawat Building,
Wada Road, Tal. Khed, Dist.Pune. ...Respondents.

Shri S. Saudagar, Advocate for the appellants/applicants.

None present for the respondents no.1 and 2.

Shri E. Afonso, Advocate for the respondents no.3.

Coram :- NUTAN D. SARDESSAI, J.

Date:29th April, 2016.

JUDGMENT :

Heard.

2. On going through the averments in the application, it is apparent that the appellants had relied upon the said witness whom they wanted to examine before the learned Trial Court. He stated that however, due to the instructions, the examination of the witness listed therein came to be withdrawn on behalf of the applicants. Moreover it was otherwise spelt out in the application that the applicants were illiterate and of old age and they were not aware of the necessity to examine the said witness.

3. Interest of justice demands a fair opportunity should be given to the aggrieved parties and in view thereof, i am not inclined to accept the objection of the learned Counsel Shri E. Afonso that the applicants had not been diligent in pursuing their remedy.

4. The application is therefore, allowed. The matter is remanded to the learned Trial Court to allow the examination of the said eye witness before it without prejudice to the rights of the

respondents to lead any evidence, if need be.

5. In view of this order, the impugned judgment and award dated 23.5.2012 is quashed and set aside and the matter is remanded to the learned Tribunal for disposal in accordance with law.

6. The parties are directed to appear before the learned Motor Accident Claims Tribunal, Mapusa on 7.6.2016 at 10.00 hours.

7. The First Appeal and the application stand disposed off accordingly.

NUTAN D. SARDESSAI, J.

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