

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 2375 OF 2013**

Smt. Rekha Prakash Shukla & Ors. ... Petitioners  
Vs.  
Shaikh Shaukatali & Anr. ... Respondents

Mr. I.M. Khairdi and Mr. Prashant Paste, Advocate for the petitioners.  
None present for the respondents.

**CORAM : MRS.MRIDULA BHATKAR, J.**  
**DATE: SEPTEMBER 16, 2016**

**P.C.:**

Rule. Though served, none present for the respondents. Hence, heard finally.

2. This Writ Petition under Articles 226 and 227 of the Constitution of India is filed directing against the order dated 30<sup>th</sup> August, 2012 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai below Exhibit 15 in M.A.C.P. No. 720 of 2008. The petitioners are the original claimants, who filed the Application for compensation before the Motor Accident Claims Tribunal, Mumbai. In the said application, respondent no.1/owner of the vehicle did not appear though served and respondent no. 2/insurance company appeared but did not file reply or written statement. Hence, the ex-parte order was passed against respondent nos. 1 and 2 on 13<sup>th</sup> February, 2012 and the Tribunal proceeded with the matter. The evidence of the claimants was recorded and closed on 31<sup>st</sup>

July, 2012. Thereafter respondent no. 2 filed an application under section 170 of Motor Vehicles Act seeking permission that the insurance company be allowed to file written statement.

3. The only contention raised by the learned counsel for the petitioners in this petition is that the respondent should not have filed an application under section 170 of the Motor Vehicles Act but should have filed proper application for setting aside the ex-parte order and thereafter any other application could have been entertained. Hence, the impugned order passed under section 170 of M.V. Act is illegal and to be quashed and set aside.

4. I have perused the baliff report showing the service on respondent no. 2, who is the original applicant in Exhibit 15. The respondent no. 2 was served on 10<sup>th</sup> June, 2013, however, none present.

5. The Tribunal has proceeded ex-parte after passing the order on 13<sup>th</sup> February, 2012. Thereafter the evidence of the claimants was also recorded. The respondent/insurance company is already impleaded as a party opponent by the claimants in the original Claim Petition No. 720 of 2008. So it was necessary on the part of respondent no. 2 to make proper application under Civil Procedure Code for setting aside the exparte order

and thereafter the respondent/insurance company may take out application under section 170 of M.V. Act for seeking permission to take the defences available under section 149(2) of the Motor Vehicles Act. Therefore, the impugned order passed by the learned Member of Motor Accident Claims Tribunal, Mumbai is ex-facie illegal and needs to be set aside with following order:

- (i) Rule made absolute.
- (ii) The order dated 30<sup>th</sup> August, 2012 is hereby set aside.
- (iii) The respondent/insurance company may file application for setting aside ex-parte order, if they want, within four weeks. Liberty granted to the petitioners/original claimants to oppose the same. The Tribunal may proceed and try to expedite the matter within six months.

6. Writ Petition is disposed of.

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