

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8646 OF 2017
WITH
WRIT PETITION NO.8651 OF 2017
WITH
WRIT PETITION NO.8662 OF 2017

GOVIND DATTU BHAT
VERSUS
BALAJI SHIVAJI GAIKWAD

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Advocate for Petitioner : Shri Venjane Tukaram M.
Advocates for Respondents : Shri Shinde R.S.
and Shri Patel Fayaz K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 19, 2018

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PER COURT :-

1. In all these petitions, the petitioner is the same owner of the rickshaw, which was involved in an accident with a motor-cycle. All these petitions arise out of the common order dated 5.12.2017 delivered by the Motor Accident Claims Tribunal, Udgir, in Applications Exhibits 23, 16 and 30 in MACP Nos. 8, 14 and 15 of 2015, respectively.

2. Upon hearing the learned Advocates for the respective sides, Writ Petition No.8651 of 2017 is sought to be withdrawn on instructions as, the petitioner had sought the impleadment of

the father of the deceased motor-cycle driver as a defendant in MACP No.15 of 2015, in which, he is already a claimant. This Writ Petition is, therefore, disposed off as withdrawn.

3. In so far as the two other Writ Petitions are concerned, the petitioner had moved applications Exhibits 23 and 16 seeking leave to add the driver as well as the owner of the motor-cycle bearing No. MH-24-AA-2562, as a respondent in MACP No.8 and 14 of 2015. The driver of the said motor-cycle has subsequently died because of the injuries suffered in the said accident. The trial Court, therefore, rightly concluded while passing the impugned order that a deceased person cannot be impleaded as a defendant in an accident claim.

4. I, however, find that the petitioner had specifically prayed, consistently, in paragraph Nos.2 to 5 and 7 to 9 that the driver and owner of the motor-cycle, who are two different persons, should be arrayed as defendants. I find that the trial Court has framed an issue as to whether it would be possible to add the driver of the motor-cycle as a defendant. It has rejected both the applications purely on the ground that the driver of the motor-cycle has subsequently passed away. The trial Court, however, completely lost sight of the contention of the petitioner

that the owner of the motor-cycle needs to be added as a defendant. Despite putting forth this claim in the amendment application at seven places, the trial Court inadvertently failed to deal with the said prayer.

5. Considering the above, both the petitions are partly allowed. The decision of the trial Court that the deceased Driver cannot be arrayed as a defendant, is sustained. However, application Exhibit 23 and 16 are restored in MACP No.8 and 14 of 2015 so that the trial Court would decide both these applications on their own merits only to the extent of whether the owner of the said motor-cycle could be arrayed as a defendant. As such, the direction imposing costs in these two applications also stands set aside.

(RAVINDRA V. GHUGE, J.)

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