

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

FIRST APPEAL NO. 2372 OF 2018

1. Dagadu s/o Ramdas Bade
Age : Major, Occu : Owner,
R/o. Chinchpur Pangul, Tq. Pathardi,
Dist. Ahmednagar

2. Ramdas S/o. Sahebrao Bade,
Age : Major, Occu : Driver,
R/o. As above.

.. Appellants

(Orig. opponents i.e owner and driver
of Motorcycle MH-16-AZ-9177)

VERSUS

1. Kushivarta w/o Shivaji Anarase,
Age : 54 years, Occu : Household,
2. Rajendra S/o Shivaji Anarase
Age : 32 years, Occu : Service,
3. Bhagwat s/o Shivaji Anarase
Age : 29 years, Occu : Service,

All R/o. Kerul, Tq. Ashti, Dist. Beed

..Respondents
(Orig. claimants)

...

Shri T.M. Tandale, Advocate for Appellants;
Shri M.D. Shinde, Advocate, h/f. Shri S.B. Choudhari,
Advocate for Respondents No.1 to 3.

...

CORAM : P.R. BORA, J.

Dated: August 30, 2018

ORAL JUDGMENT :

1. With consent of the learned Counsel appearing for the parties, the appeal is heard finally.

2. The present respondents had preferred the Motor Accident Claim Petition No.334 of 2014 in the Motor Accident Claims Tribunal at Beed claiming compensation on account of the death of one Shivaji Digambar Anarase in a vehicular accident happened on 11.02.2014. In the said petition, respondents no.1 and 2 i.e. present appellants no.1 & 2 both were served by way of public notice. Both the appellants, however, unaware of the said public notice did not cause their appearance in the matter and the claim petition was, thus, decided *ex-parte* against them on 02.08.2017. The said *ex-parte* Award is challenged by the appellants in the present appeal.

3. Shri Tandale, the learned Counsel appearing for the appellants submitted that, appellant no.1 Dagadu is serving in the army and at the relevant time was posted at Bikaner. The

learned Counsel further submitted that, appellant no.2 Ramdas resides in village Chinchpur Pangul, however the notice was never served upon him. The learned Counsel further submitted that, the public notice issued against the present appellants was not within the knowledge of both the appellants and as such, they did not cause their appearance in the matter. Learned Counsel for the appellants submitted that, in the claim petition filed by the respondents, who are hereinafter referred to as the claimants, they have not made party to the Insurance Company, with which, the vehicle involved in the alleged accident i.e. motorcycle bearing Registration No.MH-16-AZ-9177 was insured and the policy of insurance was in force. The learned Counsel submitted that, since the appellants did not get any opportunity to defend the claim petition filed by the claimants, the present appeal needs to be allowed by remanding the matter for its fresh decision to the Tribunal with permission to the present appellants to file their written statement and take all possible defences to defend the petition filed by the claimants.

4. Learned Counsel, Shri M.D. Shinde appearing for the respondents i.e. original claimants submitted that, even the

claimants were not aware that, the offending motorcycle owned by present appellant no.1 was insured or not and in such circumstances, the claim petition was filed only against the owner and driver of the offending vehicle. Learned Counsel submitted that, since the present appellants could not be served on their address as was known to the claimants, there was no other option for the claimants except to serve the respondents i.e. present appellants by way of public notice. The learned Counsel, in the circumstance, has submitted for passing appropriate orders.

5. After having considered the submissions made by the learned Counsel appearing for the parties, it appears to me that, the appellants have certainly made out a case for remanding the present matter for its decision on merits. It is not disputed by the respondents that, appellant no.1 Dagadu is in the services of army and at the relevant time, he was posted at Bikaner. Therefore, there is every reason to believe that, the public notice issued in the newspapers in the area of Ahmednagar could not have been noticed by appellant no.1. Appellant no.2 Ramdas is

a rustic villager. It cannot be certainly said that, the public notice published in a newspaper would have come to his notice and in spite of that, he remained absent. Thus, the reasons assigned by the appellants for not appearing before the Court are convincing. In the circumstances, the appellants need to be given an opportunity to defend the claim petition filed by the claimants by filing their written-statement before the Tribunal.

6. In view of the submissions made by the learned Counsel appearing for the claimants that, at the relevant time, the claimants were also not aware of the fact that, the offending vehicle was insured and hence they did not make the insurance company as party respondent in the matter, if the matter is remanded, even the claimants may get an opportunity to add the Insurance Company as party respondent and the matter then can be decided on merits.

7. For the reasons stated above, I am inclined to allow the present appeal. Hence, the following order.

ORDER

(i) The order passed by the Motor Accident Claims Tribunal at Beed in Motor Accident Claim Petition No.334 of 2014 on 02.08.2017 is set aside.

(ii) The matter is remitted back to the Tribunal to decide it afresh by giving due opportunity to the present appellants for filing their written statement as well as to the Original claimants to add the Insurance Company as party respondent to the claim petition.

(iii) It would be open for the appellants to withdraw the statutory amount of Rs.25,000/- deposited by them in this Court at the time of filing of the present appeal.

. The appeal stands allowed in the aforesaid terms.

(iv) Civil Application No.5468 of 2018 stands disposed of.

(PR. BORA, J.)