

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

65 FIRST APPEAL NO.755 OF 2018

1. Smt. Pushpa Bajirao Thorat,
Age : 43 years, Occu : Household
2. Avinash Bajirao Thorat,
Age : 25 years, Occu : Education
3. Tejas Bajirao Thorat,
Age : 23 years, Occu : Education
4. Nilesh Bajirao Thorat,
Age : 22 years, Occu : Education
5. Smt Thakubai Laxman Thorat
Since deceased

All R/o Randhe, Tq. Parner,
Dist. Ahmednagar

..APPELLANTS
(Orig. Claimants)

VERSUS

1. Dnyaneshwar Kondaji Auti
Died
2. The Branch Manager,
The Oriental Insurance Company Ltd.,
Shivam Chambers, Nagar Manmad Road,
Opp. Zopadi Canteen, Savedi Road,
Ahmednagar.

..RESPONDENTS
(Original opponents)

...
Advocate for Appellants : Shri R.R. Karpe
Advocate for Respondent No.2 : Shri V.N. Upadhye
...

**WITH
CIVIL APPLICATION NO.9837 OF 2018
IN FIRST APPEAL NO.755 OF 2018**

Smt.Pushpa Bajirao Thorat
and Others.

..Applicants

Versus

Dnyaneshwar Kondaji Auti
and others

..Respondents

...
**WITH
CIVIL APPLICATION NO.9838 OF 2018
IN FIRST APPEAL NO.755 OF 2018**

Smt.Pushpa Bajirao Thorat
and Others.

..Applicants

Versus

Dnyaneshwar Kondaji Auti
and others

..Respondents

...

CORAM : P.R. BORA, J.

Dated: 18th SEPTEMBER, 2018

ORAL JUDGMENT :

1. Heard finally with the consent of the learned Counsel for the parties.
2. Following two questions fall for my consideration in the

present appeal:

“I) Failure on the part of the claimants in bringing on record the legal heirs of the owner of the offending vehicle, who died during pendency of the claim petition and in whose favour a certificate of insurance had been issued, whether would result in dismissal of the claim petition on that ground ?

II) Whether the application filed by the appellants at Exh.48 for bringing on record the legal heirs of deceased opponent No.1, after pronouncement of the Judgment by the Tribunal in the open Court, was liable to be considered by the Tribunal since by that time the Judgment was not signed by the Tribunal ?”

3. The Motor Accident Claims Tribunal, Ahmednagar, has dismissed the claim petition filed by the present appellants on the said ground vide Judgment dated 02.08.2017 in Motor Accident Claim Petition No.287 of 2010, and has also rejected the application at Exh.48 seeking leave to bring on record the legal heirs of deceased opponent No.1. Both these orders are challenged in the present appeal.

4. The appellants had filed Motor Accident Claim Petition No.287 of 2010 before the Motor Accident Claims Tribunal at Ahmednagar under Section 166 of the Motor Vehicles Act, 1988

(hereinafter referred to as the 'M.V.Act') seeking compensation on account of death of Bajirao Laxman Thorat in a vehicular accident happened on 09.01.2010 having involvement of a Pick Up Van bearing registration No.MH-16 Q-7867 owned by deceased respondent No.1 and insured with respondent No.2.

5. As per the case of the appellants, deceased Bajirao was proceeding on his Motorcycle and was dashed by the aforesaid Pick Up Van and in the accident so happened, he was severely injured. Though, he was immediately removed initially to the Pathare Hospital and then was shifted to Surya Hospital and then also taken to Sasoon Hospital, could not survive and succumbed to the injuries on 21.01.2010. The appellants had alleged that the accident happened because of the sole negligence of driver of the Pick Up Van. The driver of the Pick Up Van himself was its owner. He filed his written statement and opposed the claim. Respondent No.2 - Insurance Company had also filed its written statement and though, disputed the claim of the appellants on various grounds, did not dispute that the offending vehicle was insured with it and the insurance

policy was in force on the date of the accident. The Insurance Company had raised an objection alleging breach of terms and conditions of the insurance policy by the owner of the vehicle and has disowned the liability to indemnify him.

6. On the rival pleadings of the parties, the issues were framed by the Tribunal and the trial of the claim petition was proceeded further. I deem it appropriate to reproduce herein below the issues framed by the Tribunal and the finding recorded by it on each of the said issue.

<u>Issues</u>	<u>Findings</u>
1 Whether applicants prove that Bajirao Laxman Thorat died in motor vehicle accident dated 09.01.2010 ?	In the .. affirmative.
2 Whether applicants further prove that the accident took place due to rash and negligent driving of Pick Up Van bearing No. MH-16-Q/7867 by its driver ?	In the .. affirmative.
3 Whether opponent No.1 proves that accident took place due to rash and negligence driving of motorcycle No.MH-04-AF/1485 by the deceased himself ?	In the .. negative.
4 Whether opponent No.2 proves that owner of pickup van bearing No. MH-16-Q/7867 opponent No.1 has committed breach of terms and conditions of insurance policy ?	In the .. negative.

- 5 Are applicants entitled for compensation?
If yes, to what extent and from whom ? .. In the
negative.
- 6 What order and Award ? .. As per final
order.

7. It is evident that though the Tribunal answered all the other issues in favour of the appellants still dismissed the claim petition on the ground that the appellants did not bring on record the legal heirs of opponent No.1 i.e. driver- cum-owner of the insured vehicle, who died during the pendency of the claim petition.

8. The record further shows that the Tribunal had dictated and pronounced the impugned Judgment in the open Court on 02.08.2017 in the first session. In second session, the appellants filed an application through their counsel with a prayer to amend the claim petition and to bring on record thereby the legal heirs of deceased opponent No.1. The application so filed by the appellants at Exh.48 was rejected by the Tribunal vide order passed by it on 03.08.2017. Aggrieved by both the aforesaid orders, the claimants have preferred the present

appeal.

9. Shri R.R.Karpe, learned Counsel appearing for the appellants submitted that the Tribunal has grossly erred in not exercising the powers vested in it under Section 151 of the Code of Civil Procedure. The learned Counsel submitted that the Tribunal adopted a hyper technical approach and illegally rejected the application filed by the appellants at Exh.48 seeking permission to bring on record the legal heirs of deceased opponent No.1 and to carry out necessary amendment in their claim petition. The learned Counsel submitted that when admittedly insurance policy was in force and the appellants had otherwise proved their entitlement for award of compensation in their favour, the learned Tribunal must have allowed the application filed by the appellants at Exh.48, since the same was filed before signing of the Judgment by the Tribunal. The learned Counsel, therefore, prayed for setting aside the impugned Judgment and order well as the order passed below Exh.48.

10. Shri V.N.Upadhye, learned Counsel appearing for the respondent Insurance Company supported the impugned Judgment and award as well as the order passed by the Tribunal below Exh.48. The learned Counsel submitted that the copy of charge-sheet was filed on record by the claimants themselves from which it can be reasonably inferred that knowledge was received to them as about the death of the owner of the vehicle on 30.06.2015 i.e. during the pendency of the petition. The learned Counsel submitted that the appellants were under an obligation to bring on record the legal heirs of the deceased driver-cum-owner of the vehicle, failure of which had resulted in abatement of the petition against said opponent No.1. The learned Counsel submitted that in absence of the insured on record, no liability could have been fastened on the respondent Insurance Company. In the circumstances, according to learned Counsel, the Tribunal has not committed any error in dismissing the claim petition as well as rejecting the application below Exh.48.

11. I have given due consideration to the submission made by

learned Counsel appearing for the appellants and the learned Counsel appearing for the Insurance Company. I have also perused the impugned Judgment and the order passed below application Exh.48.

12. It is apparently revealed that the provision under Section 155 of the Motor Vehicles Act, 1988, has been totally lost sight of by the learned Counsel appearing for the parties as well as by the Tribunal. In arguments before this Court also, the said provision has not been referred to. I deem it appropriate to reproduce Section 155 herein below, which reads thus:-

“155. Effect of death on certain causes of action.— Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925 (39 of 1925), the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.”

13. The Division Bench of the Hon'ble Karnataka High Court in the case of *New India Assurance Co.Ltd. Vs. H. Siddalinga Naika and Others [1985 ACJ 89]*, had dealt with the similar issue as it raised in the present appeal. In the said matter, alongwith other

objections in exception to the awards impugned in the said appeals, it was also the grievance of the Insurance Company that the owner of the vehicle had died during pendency of the claim petition before the Tribunal and since his legal heirs were not brought on record, the Tribunal could not have passed the award against the Insurance Company. The Division Bench rejected the contention so raised and held that;

“6. There is no substance in the contention so raised because section 102, Motor Vehicles Act, states:

“Notwithstanding anything contained in section 306, Succession Act, 1925, the death of person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.”

In this case, the claim petition was already filed before the Tribunal and insurance company had issued the policy. That being so, the fact that the owner of the lorry dies, makes no difference. The Tribunal has rightly passed award against the insurer. Hence, there is no substance in this appeal and it is liable to be dismissed. Accordingly it is dismissed. No costs in the appeal.”

14. In *Natha Singh Vs. Gurdial Singh and others [AIR 1982 Punjab and Haryana 38]* similar issue was raised before the Punjab and Haryana High Court. In the said matter also the objection was raised by the Insurance Company that it was not liable to satisfy

the claim for compensation because the legal representatives of the insured, who died during pendency of the proceeding, were not brought on record. The objection was turned down by the Punjab and Haryana High Court with the following observations made in paragraph No.3 of the said Judgment, which read thus:-

“3. Section 96 of the Act provides for the duty of the insurers to satisfy judgments against persons insured in respect of third party risks. It also provides that the insurance company or the insurer to whom the notice of the bringing of any such proceedings is given, shall be entitled to be made a party thereto and to defend the action on any of the grounds given therein. Section 102 of the Act provides, -

“Notwithstanding anything contained in Section 306 of the Indian Succession Act, 1925 (XXXIX of 1925), the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.”

In view of these provisions of the Act, it cannot be said that the insurance company is not liable to satisfy the claim for compensation to be awarded in the claim application simply because the legal representatives of Amrit Lal Gupta insured who died during the pendency of the proceedings, were not brought on the record. It is particularly so because in the insurance policy, Exhibit R-11, it has been provided inter alia vide Cl. (4) of Section II, thereof that the company may, on its own option, undertake the defence of proceedings in any Court of law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under that section. It was because of this term of the policy that the insurance company took a specific plea in paragraph 3 of their additional grounds that it had taken over the defence of the claim petition in the name of the insured to contest the claim,

as they had reserved the right under the policy of insurance. As observed earlier, this claim was accepted by the Tribunal and on that account, it was allowed to cross-examine the witnesses, on merits, as well. Under the circumstances, the ratio of the decision in Norati Devi's case, (AIR 1978 Punj. & Har 113) (supra), is most relevant. It has been held therein (at p. 114), -

“Section 96 only clarifies that if an award is made, it would be the duty of the insurance company to meet the claim. It nowhere lays down that if the insurance company is allowed to contest the liability in the absence of the insurer, it should not be held liable. Therefore, it cannot be contended that an insurance company can never be held liable so long as the insured is not impleaded as a party to the proceedings, or having been impleaded his name is ordered to be struck off from the array of the respondents on the basis that he enjoys diplomatic immunity from being sued in a Court.”

In view of the abovesaid decision of this Court, the claim application of Natha Singh, appellant, could not be dismissed on the ground that the legal representatives of Amrit Lal Gupta, deceased, were not brought on the record.”

15. In ***Oriental Insurance Co.Ltd. Vs. Nanjamma and others***, [2005 ACJ 1534] the learned single Judge of the Karnataka High Court was required to deal with the same issue and while deciding the said matter, learned Single Judge held that;

“8. In a decision rendered by a Division Bench of this court in New India Assurance Co. Ltd. Versus H. Siddalinga Naika, 1985 ACJ 89 (Karnataka), it has been held that the death of the owner of the vehicle pending claim petition would not absolve the insurer and award could be passed against the insurer. In view of the said statutory provisions and also the ratio laid down in the said decision, this court is of the considered opinion that the death of the owner of the vehicle, during pendency of he claim petition before the Tribunal, has

not made any impact on the merits of the case and the insurer cannot escape from liability on this score. It is also pertinent to mention at this stage that it is an admitted fact that there had been a valid insurance policy as on the date of accident covering the risk. It has also to be borne in mind that claimant is a third party so far as the insurance policy is concerned. In view of these aspects, the court holds that the contention of the learned counsel for the appellant in this regard is of no legal consequence.”

16. In the instant matter, the insured was admittedly alive on the date of occurrence of the alleged accident as well as on the date of filing of the claim petition by the appellants. There is further no dispute that he caused his appearance in the petition before the Tribunal and also filed his written statement opposing claim petition filed by the appellants. The observations made in the Judgment reveal that opponent No.2 i.e. Insurance Company had filed its written statement at Exh.11 and has admitted that the Pick Up Van bearing registration No.MH-16 Q-7867 was validly insured with it for a period of one year commencing from 29.11.2009 ending on 28.11.2010. The policy was thus in force on the date of occurrence of the alleged accident, which happened on 09.01.2010.

17. The discussion made by the Tribunal in paragraph No.5 of

the impugned Judgment also reveals that the only specific objection raised by the Insurance Company was that the driver of the Pick Up Van was not holding the valid and effective driving licence and as such Insurance Company was not liable to indemnify the insured. All other contentions raised by the Insurance Company in its written statement were general denials denying everything pleaded in the claim petition except that the offending vehicle was insured with it and the policy was in force on the date of the accident.

18. Based on the plea as was raised by the respondent Insurance Company, Issue No.4 was specifically framed putting burden on it to prove the plea so taken by it. I have already reproduced the Issues herein above. The Tribunal answered the said issue in negative observing that the appellant Insurance Company did not adduce any evidence on the point to substantiate the defence raised by it. The Tribunal has further observed that in the charge-sheet, it was not alleged that at the relevant time the driver was not holding valid and effective licence and there was no charge under Section 3(1)/181 of the

M.V.Act. The Tribunal has eventually recorded a clear finding that opponent No.2 i.e. Insurance Company has failed to establish that at the relevant time, the driver of the Pick Up Van was not holding valid and effective licence.

19. Considered the facts elaborated above in light of the Judgments referred herein above delivered by Karnataka High Court and Punjab and Haryana High Court and having regard to the provision under Section 155 of the M.V.Act, it can be unhesitatingly said that the Tribunal should not have dismissed the claim petition on the ground that the legal heirs of opponent No.1 i.e. owner of the vehicle were not brought on record by the claimants. From the facts, it is quite evident that death of opponent No.1 i.e insured of the offending Pick Up Van during pendency of the claim petition would not have absolved the Insurance Company from its liability to indemnify the insured and the award could have been passed by the Tribunal against the insurer.

20. The next question falls for my consideration is “whether the

application filed by the appellants at Exh.48 for bringing on record the legal heirs of deceased opponent No.1, after pronouncement of the Judgment by the Tribunal in open Court, was liable to be considered by the Tribunal since by that time the Judgment was not signed by the Tribunal ?”

Perusal of the order passed by the Tribunal below the said application demonstrates that the Counsel for the claimants had urged the Tribunal to invoke the inherent powers under Section 151 of the Code of Civil Procedure to do the complete justice. While rejecting the said application, the Tribunal has observed that the Tribunal cannot set aside its own Judgment by invoking the provisions under Section 151 of the Code of Civil Procedure. The reason as has been assigned by the Tribunal for rejecting the application also cannot be sustained.

21. Rule 3 of Order XX of Code of Civil Procedure is relevant in this regards, which reads thus:-

“Rule 3 of Order XX:

Judgment to be signed – *The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review.*

The plain reading of the aforesaid provision makes it clear that the alterations or additions may be permissible till signing of the said Judgment by the Court.

22. In *Vinod Kumar Singh Vs. Banaras Hindu University and others* [AIR 1988 Supreme Court 371] the identical issue was raised. The appellant in the said matter had filed a writ petition, which was taken up for hearing by the Division Bench of Allahabad High Court and when hearing was concluded, Judgment was dictated in the open Court allowing the writ petition and direction to the University to admit the petitioner was ordered. The said appellant applied for the certified copy of the Judgment but was told that the matter was again in the hearing list and would be heard afresh and the matter thereafter continued to appear in the hearing list and when was ultimately heard by another Bench, it was dismissed by the said new Division Bench. In the appeal filed before the Supreme Court the contention was raised that once Judgment was delivered in the open Court it became operative and could not be changed. It was also argued that dismissal of the writ petition after it had been once allowed was

without jurisdiction. It was also contended by the appellant that on the facts of the case also his petition was liable to be allowed and he should have been given admission. Though, in the facts of that case, the Hon'ble Apex Court held that the Judgment as was pronounced by the earlier Division Bench in the open Court, but remained unsigned, should not have been placed for fresh hearing and ultimately restored the decision pronounced in the open Court by the earlier Division Bench, the law laid down by the Hon'ble Apex Court interpreting Rule 3 of Order XX is quite material considering the issue involved in the present matter.

The Hon'ble Apex Court has held that

“Rule 3 of Order 20, Civil P.C. permits alternation or additions to a judgment so long as it is not signed. It is only after the judgment is both pronounced and signed that alterations or additions are not permissible, except under the provisions of S. 152 or S. 114 of the Civil P.C. or, in very exceptional cases, under S. 151 of the Civil P.C. But, while the Court has undoubted power to alter or modify a judgment, delivered but not signed, such power should be exercised judicially, sparingly and for adequate reasons. When a judgment is pronounced in open Court, parties act on the basis that it is the judgment of the Court and that the signing is a formality to follow. Ordinarily judgment is not delivered till the hearing is complete by listening to submissions of counsel and perusal of records and a definite view is reached by the Court in regard to the conclusion. Once that stage is reached and the Court pronounces the judgment, the same should not be reopened unless there be some exceptional circumstances or a review is asked for and is granted. When the judgment is pronounced, parties present in the Court know the conclusion in the matter

and often on the basis of such pronouncement, they proceed to conduct their affairs. If what is pronounced in Court is not acted upon, certainly litigants would be prejudiced. Confidence of the litigants in the judicial process would be shaken. A Judgment pronounced in open Court should be acted upon unless there be some exceptional feature and if there be any such, the same should appear from the record of the case.”

23. In the instant matter, the Judgment though was dictated and pronounced in the open Court by the Tribunal and the claim petition was declared to have been dismissed on the ground that the legal heirs of the deceased owner of the vehicle were not brought on record by the claimants, the application at Exh.48 was presented by the claimants seeking permission and consequent amendment for taking on record the legal heirs of the said deceased owner of the vehicle, before the Judgment was signed by the learned Tribunal. Infact, as elaborately discussed by me herein above, in view of the provision under Section 155 of the Motor Vehicles Act, the Tribunal should not have dismissed the petition merely on the ground that the death of a person, in whose favour a certificate of insurance had been issued, had occurred during the pendency of the claim petition. Even if it is assumed that being unaware of the said provision, for whatsoever reason, the Tribunal was of the opinion that in

the absence of the legal heirs brought on record of deceased owner of the offending vehicle, passing of an award by him would amount to passing a decree against a dead person and the dead person cannot be made liable to pay compensation and in turn the Insurance Company cannot be asked to indemnify the dead person, then it was a fit case wherein the Tribunal must have exercised its discretion in allowing the application instead of rejecting the same in view of the findings recorded by it on Issue Nos.1 to 4.

24. As stated earlier, the Tribunal has answered Issue Nos.1 to 4 in favour of the claimants. In the circumstances, bringing on record the legal heirs of deceased opponent No.1 was mere a formality. From the impugned Judgment, it is explicit that the Tribunal was otherwise fully convinced and had formed the opinion that the claimants were entitled for award of compensation but was constrained to dismiss the petition on the ground that the legal heirs of deceased opponent No.1 were not taken on record. It appears to me that filing of an application at Exh.48 by the claimants infact was an opportunity for the

Tribunal to exercise its discretion so as to prevent the injustice which was likely to be caused to the claimants, who were legally entitled for award of compensation in their favour. It was well within the competence of the Tribunal, since by that time, it had not signed the Judgment. The learned Tribunal failed in appreciating the import of Rule 3 of Order XX of the Code of Civil Procedure. It cannot be forgotten that the Courts and Tribunals are constituted for doing the Justice to the parties and as such where the circumstances warrant, the Courts and the Tribunals as the case may be are expected to exercise their discretion to do real and substantial justice for the administration of which alone they exist.

25. I reiterate that taking on record the legal heirs of deceased opponent No.1 had remained only a formality. Allowing the application at Exh.48 was not likely to result in any change in the findings recorded by the Tribunal on the core issues involved in the matter and was also not likely to cause any prejudice to respondent Insurance Company since even otherwise liability to satisfy the award to be passed was on the

Insurance Company. The Tribunal must have also taken into account that the Motor Vehicles Act is a beneficial legislation and Section 169 of the Act empowers the Tribunal to follow such summary procedure as it thinks fit in holding enquiry under Section 168 of the Motor Vehicles Act. The learned Tribunal failed in exercising the discretion vested in it though, present was a fit case for exercising such discretion.

26. For the aforesaid reasons, I set aside the Judgment and order passed in Motor Accident Claim Petition No.287 of 2010 passed on 02.08.2017. I also set aside the order passed below Exh.48 in the said petition.

27. For the reasons stated in the applications, Civil Application Nos.9837 of 2018 and 9838 of 2018 are allowed and disposed of.

28. The legal heirs of deceased appellant No.5 and deceased opponent No.1 are permitted to be taken on record.

29. The matter is remitted back to the Tribunal for deciding Issue No.5 framed by it on its own merits and pass the award accordingly.

30. The appeal is allowed in the aforesaid terms.

31. Record and Proceeding be forthwith sent back to the Motor Accident Claims Tribunal, Ahmednagar.

(P.R.BORA)
JUDGE

SPT