

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12007 OF 2018

USHABAI SURESH PAWAR AND OTHERS
VERSUS
SUNIL ANKAT KOLI AND ANOTHER

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Advocate for Petitioners : Mr. S.H. Tripathi h/f Mr. N.R. Dayama

Advocate for Respondent No.1: Mr. Yogesh M. Patil

Advocate for Respondents : Mr. S.S. Dargad h/f Mr. S.G.
Chapalgaonkar

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CORAM : N. M. JAMDAR, J.
DATED : 17 DECEMBER 2018

PER COURT:-

1. Heard the learned counsel for the parties.
2. The petitioners claimants have challenged the order dated 3 October 2018 rejecting the application filed by the petitioners for issuance of a witness summons. The petitioners have filed an application for examination of the concerned police inspector, as according to the petitioners, in view of the accident that took place, there was some error regarding the registration number of the vehicle and the investigating officer would be able to explain the position.
3. While issuing notice, this Court on 26 October 2018 had

passed the following speaking order:-

“1 The Petitioners are aggrieved by the order dated 03.10.2018 by which, the Motor Accident Claims Tribunal, Jalgaon has rejected the application Exhibit 76 filed by the Petitioners in MACP No.256/2011. Consequentially, the request to examine the Investigating Officer Shri Kiran Shinde, has been rejected.

2 The learned Advocate for the Petitioners submits that the deceased Suresh was knocked down by Ape Rickshaw, whose actual registration number is MH-19-AX-0921. The accused driver-cum-owner of the vehicle has hidden the said vehicle in his residence and has posed his other auto rickshaw bearing registration number MH-19-AE-4472 as being his self owned rickshaw. Consequentially, the wrong number of Ape Rickshaw has been mentioned and this is likely to be crucial for the claim of the dependents of the deceased. It is submitted that the Investigating Officer Shri Kiran Shinde can alone shed light on this aspect and justice would be done, if he is permitted to be examined. The refusal of the Tribunal would practically defeat the claim of the Petitioners.

3 I find from the impugned order that the Tribunal has rejected the application not on it's merits, but purely on the ground that Exhibit 76 was filed after the recording of oral evidence had concluded.

4 Issue notice to the Respondents returnable on 14.12.2018. Hamdast is granted on request.

5 Until then, the Tribunal would adjourn MACP No.256/2011.

6 Copies of the petition paper book shall be supplied for issuance of notice on or before 02.11.2018, failing

which, this petition shall stand dismissed without reference to the Court on 03.11.2018.”

4. As already noted, if the investigating officer who can explain the position regarding the registration number of vehicle in question is not allowed to be examined it would practically defeat the claim of the petitioners. The Tribunal has not rejected the application on merits but on the ground that it was filed after recording of the oral evidence.

5. Keeping in mind the nature of the proceedings and the status of the petitioners, the learned Civil Judge ought to have considered the application for issuance of witness summons.

6. In view of this position, the impugned order dated 3 October 2018 is quashed and set aside. The application below Exh.76 is allowed.

7. All contentions of the parties on merits are kept open.

8. Writ petition is accordingly disposed of.

(N. M. JAMDAR, J.)

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