

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION No. 5900 OF 2018

Khan Zulfikar Taswwar

...Petitioner

Versus

B.E.S.T. undertaking. & Anr.

...Respondents

.....

Mr.Mohammad Qais i/b. Mr. Mohd. Yausuf Khan for the Petitioner.

.....

**CORAM:MRS.MRIDULA BHATKAR, J.
DATED: JULY 19, 2018**

P.C. :

1. This Petition is directed against the order dated 24th April, 2017 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai in Misc. Application No. 210 of 2017 in Claim Application No. 297 of 2010. By judgment and order dated 29th March 2017, the learned Member of the tribunal allowed Claim Application No.297 of 2010 wherein the name of the applicants i.e., parents were shown. The application for compensation was filed by the father and the mother of the deceased son. After filing of the claim application, the mother Khan Sabra Khatoon Zulfikar expired on 18th March, 2010 at village Korrahi Dist. Banda, U.P. Accordingly, the Advocate for the applicants moved

an application for amendment of the cause title, which was allowed. However, due to inadvertence, the requisite amendment could not be carried out in the judgment and order dated 29th March, 2017 and the name of the deceased Sabra remained as an applicant. However, the applicant -Khan Zulfikar Taswwar, who is the father of the deceased Bilal, moved an application that as the mother of the deceased son has expired, he is the only legal representative of his wife and, therefore, the entire amount of compensation alongwith interest accrued thereon is to be drawn in the name of the applicant- Khan Zulfikar Taswwar. The said application was rejected by order dated 24th April, 2017 passed by the learned Member of the tribunal on the ground that the judgment is already delivered and the Court has become functo officio and no amendment can be allowed by the Court. Hence, this Writ Petition.

2. Perused impugned order. Also perused documents and the death certificate of Khan Sabra Khatoon Zulfikar alongwith affidavit of Khan Zulfikar Taswwar produced by the learned Counsel for the petitioner. From the death certificate, it appears that Khan Sabra Khatoon Zulfikar expired on 18th March, 2010 and as per affidavit, the petitioner is the only legal representative of Khan Sabra Khatoon Zulfikar, who is already on record and one of the claimants.

3. In view of this, the cause title of the judgment and order dated 29th March, 2017 passed by the learned Member, Motor Accidents Claims Tribunal, Mumbai would have been amended. The learned Member of the tribunal needs to take into account the provisions under Sections 151, 152 and 153 of the Code of Civil Procedure, 1908. The application for amendment of the cause title is allowed. Amendment is to be carried out in the cause title of the judgment and order dated 29th March, 2017 passed by the learned Member of the tribunal in Claim Application No. 297 of 2010.

4. Writ Petition is allowed and is accordingly disposed of.

(MRIDULA BHATKAR, J.)