

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

WRIT PETITION No.2 OF 2018

Shri Ashok Keshav Sutar & anr.

... Petitioners

Vs.

Shri Vivek Vitthal Gorpade & anr.

... Respondents

Mr.Pandit Kumar i/b Paras Yadav for the Petitioners

Mr.A.A. Kulkarni for the Respondents

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: AUGUST 10, 2018**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. This Writ Petition is directed against the order passed by the Motor Accident Claims Tribunal, Kolhapur dated 30.6.2017, thereby rejecting the application filed by the petitioner/opponent No.1, the owner of the jeep, that the rider of the motor cycle is to be made party opponent. Respondents are the original applicants / claimants in the injury claim before the Motor Accident Claims Tribunal, Kolhapur being MACP No.324 of 2016. There was a collision of the jeep and the motor cycle. The claimant No.1 i.e.,

the respondent No.1 herein, was the pillion rider and his father was riding the motor cycle. They filed the claim against the owner and driver of the jeep. The vehicle was not insured. In the said proceedings, the petitioner No.1 who is the owner of the jeep, moved application under Order 1 Rule 10 that the rider of the motor cycle be made party opponent. The said application was rejected. Hence, this petition.

3. Learned Counsel for the petitioners submits that it is a case of contributory negligence and accordingly, the petitioners have made out a case. So, the rider of the motor cycle is the necessary party. The order passed by the Tribunal is to be set aside and his application be allowed.

4. Learned Counsel for the claimants opposes this petition.

5. My attention is drawn to the statement of one police officer, who is a complainant in the criminal case and where the offence is registered against the present petitioners also respondent No.2. However, this cannot be the ground to implead the owner or rider of the motor cycle. Though the defence of the contributory negligence is taken and if it is accepted by the Tribunal, then,

accordingly, the Tribunal will pass the order and saddle the liability on the petitioners. For the purpose of adjudicating the claim, the presence of the Valuer of the motor cycle is not necessary. The view taken by the Tribunal cannot be faulted with.

6. Petition is thus dismissed.

(MRIDULA BHATKAR, J.)