

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION No. 10217 OF 2014**

Smt. Deepali Sugandh Talawadekar & Ors. ... Petitioners  
Vs.  
Bharti Axa General Insurance Co. Ltd. & Anr. ... Respondents

Mr. Asim Vidyarthi a/w. Ms. Ruchika Dave, Advocate for the petitioners.  
Mr. Nikhil Mehta I/b. KMC Legal Venture, Advocate for respondent no. 1.

CORAM: **MRS.MRIDULA BHATKAR, J.**  
DATE: **25<sup>th</sup> July, 2018.**

**P.C.:**

In this Writ Petition, the order dated 31<sup>st</sup> October, 2014 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai below Exhibit 46 in Application No. 1826 of 2012 is challenged.

2. The insurance company, who is the respondent in the Claim Application, filed an Application for amendment of the written statement under Order 6 Rule 17 of the Code of Civil Procedure after the evidence of the claimants were recorded. It was pleaded by the insurer that the insurance company had knowledge from the statement of the driver which was recorded by their investigator that insured vehicle was used for hire and reward basis at the time of accident and thus, the insured owner has breached the terms and

conditions of the policy. It was contended that the insurer had knowledge few days prior to making this application for seeking amendment in the Application. The said Application was allowed. Hence, this Writ Petition.

3. The learned counsel for the petitioners submitted that this is a very material amendment and it was sought at very late stage, i.e., when the evidence of claimants was over. He submitted that the insurance company was not at all diligent in the conduct and therefore, this Application made by them for amendment ought to have been rejected. The learned counsel submitted that at that time, the insurance company has also made another application that the insurer be allowed to lead its own evidence. The learned counsel has submitted that in fact the insurance company has submitted the pursis for closure of evidence before the Tribunal and at this stage, said opportunity cannot be given to the insurance company to open evidence and the learned Member has not passed any order on the said application. He further submitted that it is a death claim filed by the parent and two minor daughters of the deceased. It is pending since 2012. The learned counsel on the point of diligence in respect of Order 6 Rule 17 of Code of Civil Procedure has relied on the

judgment of Single Judge of this Court in the case of **Prabhakar Sadashiv Gokhale & Anr. vs. Ramesh Shankar Ladkat & Ors.**, reported in 2017(4) Mh. L.J. 634.

4. Heard the submissions and perused the impugned order.

5. In the case of **Prabhakar Sadashiv Gokhale** (*supra*), the Single Judge of this court has held that issue of due diligence of the parties is the essence of allowing amendment and if the diligence is not shown, such amendment cannot be allowed.

6. It appears from the order of the Tribunal that in the beginning the insurer has no knowledge about the report of investigator. It appears from the submissions that the Application was made on 10<sup>th</sup> September, 2014 and the report of investigator was submitted on 16<sup>th</sup> October, 2014. There may be fact of time distortion, however, it appears that there is a probability to accept that the insurance company had recent knowledge before filing of this Application. This is a Claim Application filed under the Motor Vehicle Act where the insurance company is entitled to take statutory defence and other defences as provided under the Act. It appears that this fact was not

within the knowledge of the insurance company when they filed the written statement, as the report of the investigator ex-facie was not available. Thus, I am of the view that this is a very material fact to decide the real issue of controversy between the parties. Hence, the order passed by the learned Member of the Tribunal is correct. No interference is required. However, the order of cost is modified. As the matter is old, the following order is passed:

- (a) Writ Petition is dismissed;
- (b) The order of the learned Member of the Tribunal is maintained with cost of Rs.10,000/- which is to be paid to the claimants within 15 days from today;
- (c) Though the order is not passed on the Application of giving permission to open the evidence, the claimants have right to lead further evidence, if the claimants want to, on the basis of the amendment. Thereafter, the insurer may lead evidence;
- (d) The Tribunal to complete the trial on or before 15<sup>th</sup> September, 2018. Parties to cooperate.

**MRIDULA BHATKAR, J.)**