

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 487 OF 2019**

1. Mr. Daksh Chodankar, s/o Harihar Chodankar, 18 years of age, resident of H. No. 1792/5, Vidhyanagar, Near Goa Secondary Board Porvorim-Goa.
 2. Mr. Deepak Vishnu Sawant, 56 years of age, resident of B-XII-I, New Police Quarters, Porvorim-Goa. Petitioners
- Versus
1. Mrs. Clementina Pires, wife of Jose Joaquim Pires, aged 71 years, Indian National, R/o M-78, Housing Board Colony P.O. Alto Betim, Porvorim, Bardez, Goa - 403 521. Respondent

Mr. Nigel Da Costa Frias, Advocate for the Petitioners.

Mr. Vikram Varma with Ms. Aishvarya Varma, Advocates for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 16th July, 2019

ORAL JUDGMENT:

Rule made returnable forthwith. The learned Counsel for the respondent waives service. Heard finally by consent of parties.

2. Normally, this Court would have not interfered with the impugned order as the learned Tribunal has rightly found that there was a delay of about one year in seeking recall of the

two witnesses, namely, AW-2 and AW-3 for cross examination on behalf of the petitioners. AW-2 is the Investigating Officer, while AW-3 is the Doctor, who examined the respondent/claimant.

3. Mr. Costa Frias, the learned Counsel for the petitioners, on instructions, has restricted the relief only insofar as recall of the Investigating Officer (AW-2) is concerned. In other words, the petitioners are not pressing for recall of the Doctor (AW-3).

4. It transpired during the course of arguments at bar that the Insurance Company has not contested the claim petition. The learned Counsel for the respondent pointed out that during the investigation, it was found that the offending vehicle was not insured.

5. Mr. Costa Frias, the learned Counsel for the petitioners, in all fairness, states that if, AW-2 is recalled and is allowed to cross examine on behalf of the petitioners, the petitioners shall not seek re-opening of their evidence, by examining any other witness. The statement is accepted.

6. The Investigating Officer is a material witness in the dispute of the present nature, where the claim is based on the issue of negligence on the part of the Driver of the offending vehicle. Indeed there is a delay on the part of the petitioners in seeking the recall, which can be allowed subject to costs. Considering the overall circumstances and in order to give a fair chance to the petitioners, the following order is passed:

O R D E R

- (i) The petition is partly allowed.
- (ii) The impugned order to the extent refusing to recall AW-2 is hereby set aside.
- (iii) The Tribunal shall recall AW-2 for cross examination on behalf of the petitioners, subject to the petitioners depositing costs of Rs.15,000/-, payable to the respondent, within two weeks from today.
- (iv) The deposit of costs of Rs.15,000/- is a condition precedent for recall of AW-2.
- (v) The Tribunal shall decide the claim petition as expeditiously as possible and preferably within a period of six months from the receipt hereof.
- (vi) Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.