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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 470 OF 2014

|                                  |                |
|----------------------------------|----------------|
| Smt. Pushpa Bhivdas Sandanshiv   | ...Appellant   |
| V/s.                             |                |
| Mr. Sitaram Soma Mahale and Ors. | ...Respondents |

Mr. C.M. Lokeshappa i/by Mr. C.S. Patil for the Appellant.

Mr. D.R. Mahadik for the Respondent No.3.

**CORAM : R.D. DHANUKA, J.**  
**DATE : 11TH NOVEMBER, 2019.**

**P.C. :-**

1. By consent of the appellant and the respondent no.3 the appeal is heard finally at the admission stage.

2. The appellant had filed a claim petition against the respondents arising out of the accident occurred on 25<sup>th</sup> March, 2005. It was the case of the appellant that the son of the appellant Hemant met with an accident as he was travelling on a motorcycle bearing No.MH W-9072 along with Kamlesh Mahale, the son of the respondent no.1. The motorcycle was driven by the respondent no.2. Son of the appellant was a pillion rider. At about 19.30 hours while the motorcycle was on Kalyan Bhiwandi Road, one unknown auto rickshaw came from the opposite side i.e. from the side of Kalyan in high speed and gave dash to the motorcycle due to which the same fell down and the appellant's son sustained injuries set out in paragraph 2 of the impugned judgment and order.

3. It is the case of the appellant that the said Hemant could not enter the witness box, since he was hospitalized for quite some time. The evidence was thus led by the appellant herself and two other witnesses. The respondent no.2 died in 2006. The respondent no.3 was the only contesting party before the M.A.C.T.

4. Learned Member of the Tribunal held that the witness as examined by the appellant had duly proved the injury suffered and had also proved the salary certificate showing the income of the son of the appellant who met with an accident. It is held that the manner in which the accident occurred is not at all disputed. Learned Tribunal also considered the F.I.R. and held that the respondent no.2 was driving the motorcycle and injured the son of the appellant who had sustained the injury along with him in the course of accident. These facts were not disputed. The son of the appellant was required to undergo surgery for the injury sustained by him in the accident. These facts were not disputed by the respondent no.3.

5. The Tribunal however, held that there was not a single word about the rashness or negligence of the respondent no.2 anywhere in the pleading filed by the appellant. In my view this finding of the Tribunal is inconsistent with the finding rendered in paragraph 8 of the impugned judgment and order.

6. A perusal of the impugned judgment and order indicates

that since the son of the appellant who met with an accident himself did not enter the witness box and the respondent no.2 who expired also could not enter the witness box, though various findings were in favour of the appellant rendered by the learned Tribunal, the claim petition filed by the appellant was dismissed.

7. Learned counsel appearing for the appellant states that now his client has recovered from illness and he being an eye witness, is ready and willing to enter into witness box and prove his case that the driver of the motorcycle was not negligent but the respondent no.2 alone was negligent. Learned counsel appearing for the Insurance Company states that since at the relevant time the injured person himself was not available for entering into witness box and now since he claims to be available for recording evidence, the matter may be remanded back to the Tribunal for recording evidence of the injured person and to hear the matter afresh for all purposes. Statement is accepted.

8. The impugned judgment and order dated 19<sup>th</sup> December, 2013 passed by the M.A.C.T., Kalyan in M.A.C.P. No.203 of 2005 is set aside. The M.A.C.P. No.203 of 2005 is restored to file before the M.A.C.T., Kalyan for recording evidence of the injured person and any other witness he proposes to examine. The injured person is directed to file affidavit of evidence along with documents, if any, within four weeks from today along with a list of witnesses and shall serve a copy thereof upon the respondent no.3's advocate

simultaneously. If the respondent no.3 seeks to examine any witness, Tribunal to permit the respondent no.3 also to lead evidence.

9. The Tribunal shall give an opportunity to the appellant to lead documentary as well as oral evidence to prove the case of the appellant on the issue of negligence as well as on the quantification. The Tribunal shall make an endeavor to dispose of the said M.A.C.P. No.203 of 2005 within six months from the date of commencement of evidence. The parties shall co-operate with each other and also with the M.A.C.T. to dispose of the said M.A.C.P. No.203 of 2005 expeditiously and shall not grant any unnecessary adjournment. The Tribunal shall decide the matter afresh without being influenced by the observations made and the conclusion drawn in the impugned judgment and order which is the subject matter of this first appeal.

10. The first appeal is allowed on aforesaid terms. There shall be no order as to costs.

11. All parties as well as the M.A.C.T., Kalyan to act on the authenticated copy of this order.

**(R.D. DHANUKA, J.)**