

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10532 OF 2018

Shakuntalabai w/o. Gopal Kabliya,
Age 48 years, Occu. Business,
R/o. Ahmedpur, Near Girbide Hospital,
Ahmedpur, Taluka Ahmedpur,
District Latur

.. Petitioner

Versus

1. Ashok S/o. Trimbak Mundhe,
Age Major, Occu. Driver,
R/o. Ahmedpur, Near Girbide Hospital,
Ahmedpur, Taluka Ahmedpur,
District Latur

2. The Divisional Controller,
Maharashtra State Road Transport
Corporation, Latur Division, Latur

.. Respondents

...

Mr. Shrikant B. Madde, Advocate for Petitioner
Smt. Ranjana D. Reddy, Advocate for Respondent no.2

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 09-12-2021

PER COURT :-

Rule. Rule made returnable forthwith. Heard finally with
the consent of the learned Advocates for the appearing parties.

2. This petition is directed against the order dated 09-04-2018
below Exhibit-52, passed by the learned District Judge-1 and

Member, Motor Accident Claims Tribunal, Ahmedpur, in Motor Accident Claims Petition No. 13 of 2014, thereby rejecting the application of the petitioner-original claimant seeking amendment in her claim petition.

. The petitioner filed MACP no. 13 of 2014 seeking compensation for the injuries suffered by her in accident which took place on 09-01-2013. The petitioner contended that when she was travelling in S.T. bus, there was collision between the bus in which she was travelling i.e. MH-20-BL-0683 and bus No. MH-20-BC-1913. The petitioner led her evidence, so also, she examined her of the Doctor from whom she had taken treatment.

. Thereafter, the application Exhibit-52 came to be filed by the petitioner claiming that no offence or police case was registered in respect of collusion of two buses. Therefore, the petitioner did not have concerned relevant and correct documents. It is further stated that due to oversight and typing mistake the claimant mentioned the ST Bus No.MH-20-BC-1913 instead of MH-20-BL-1913 in the claim petition. The petitioner also sought to add Dattatraya s/o. Ganpatrao Fulmante, who was driver on the other Bus as necessary party in the claim petition.

. The application was opposed by the respondent-Maharashtra State Transport Corporation. The Tribunal rejected the application Exhibit-52 holding that two types of amendments are sought, firstly, in respect of number of vehicle and, secondly, for adding another person as party respondent to the claim petition. The Tribunal was of the view that since the claimant has concluded entire evidence by examining herself at Exhibit-20 and by examining Dr. Gulve at Exhibit-44 and Dr. Balaji Bhoasle at Exhibit-50. Thereafter, present application seeking amendment was filed. The amendment is not acceptable as evidence on record shows that the Bus bearing MH-20-BL-1913 is involved in the accident. It is further observed by the Tribunal that in the evidence as well as in the claim petition, nothing is mentioned in respect of fault on the part of proposed respondent i.e. Dattatraya s/o. Ganpatrao Fulmante for the accident. The Tribunal, therefore, held that adding a new person after defence is opened out would definitely change the nature of dispute, and therefore, Tribunal rejected the application Exhibit-52. This order is impugned in the present petition.

3. Heard learned Advocate for the petitioner and learned Advocate for the respondent no.2.

4. Section 166 of the Motor Vehicles Act, 1988, under which the claim proceedings are filed is a beneficial legislation. Considering the averments in the application that in respect of the collision of the two buses, no crime was registered by the police and the petitioner was not supplied correct documents and due to oversight and typing mistake, wrong S.T. Bus number was mentioned. In my view, the same ought to have been favourably considered by the Tribunal, though, it was filed after commencement of the trial. It is settled legal position that the Rules of Procedure are handmaid of justice and cannot defeat the substantive rights of the parties.

5. Learned Advocate for respondent no.2 was justified in opposing the prayer of the petitioner on the ground that the petitioner has failed to show due diligence on her part in seeking the amendment. The respondent can be compensated in terms of costs, for the lapse on the part of the petitioner. Hence, the following order :-

ORDER

- I. Writ petition is allowed.
- II. The impugned order dated 09-04-2018 passed below Exhibit-52, by the learned District Judge-1 and Member of Motor Accident Claim Tribunal, Ahmedpur, in Motor Accident Claims Petition no. 13 of 2014, is quashed and set aside.

- III. Application Exhibit-52 is hereby allowed.
- IV. The petitioner to carry out amendment in the claim petition within a period of two weeks from the date of receipt of writ of this order and the matter shall proceed further as per prescribed procedure.
- V. It is made clear that the petitioner-original claimant shall not be entitled to claim interest on the compensation amount, if any, awarded to her for the period between 28-02-2018 and 09-12-2021.
- VI. Rule is made absolute in the above terms subject to the petitioner-original claimant paying costs of Rs.5000/- (Rs. Five Thousand) to respondent no.2 in the claim petition before the Tribunal.

(NITIN B. SURYAWANSHI)
JUDGE