

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

908 FIRST APPEAL NO.914 OF 2021

The Executive Engineer,
Age: Major, Occp Service,
R/o.P.W.D.North Division,
Z.P.Dist. Ahmednagar.

.. APPELLANT

VERSUS

Rohini d/o. Ramdas @ Ramnath Tambe,
Age-36 Years, Occu-Household,
Through her Guardian,
Natural Rohini father
Ramdas @ Ramnath Abaji Tambe,
Age-70 years, Occu-Service,
R/o. Chandrapur, Tq. Rahata,
Dist. Ahmednagar.

.. RESPONDENTS

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Advocate for Appellant : Mr.S.B.Parnere
Advocate for Respondent : Mr.Ajit B. Chormal

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CORAM : S.G.DIGE, J.
DATE : 30.06.2022

PER COURT :

1] Considering the submissions of both the learned
counsel, the matter is heard finally at the admission stage.

2] The appellant has challenged the judgment and award dated 11th July, 2012 passed by the learned Member, Motor Accident Claims Tribunal, Shrirampur in MACP No.194 of 2002. The learned Tribunal has directed to pay the amount of Rs.1,09,232/- to the respondent – claimant with the interest @ Rs.6% p.a. from the date of institution of the petition till the realization thereof.

3] It is the contention of the learned counsel for the appellant that the vehicle of the appellant was insured with the Insurance Company but this fact was not considered by the learned Tribunal. The written statement of the appellant was filed but the said written statement was not taken on record as there was delay in filing written statement and the appellant could not deposit the cost imposed for filing written statement. The learned Advocate representing for the appellant did not proceed with the matter, hence, the matter proceeded *ex parte* against the appellant and the impugned order is passed. The learned

counsel further submits that the learned Tribunal was aware that the accident vehicle was insured. In spite of evidence on record, neither the respondent – claimant herein nor the learned Tribunal has added Insurance Company as party. The appellant did not get opportunity to lead the evidence before the Tribunal, hence, requested to pass appropriate order.

4] The learned counsel for the respondent submits that the appellant was present before the learned Tribunal. Sufficient opportunity was given to the appellant to file written statement. In spite of that, the appellant failed to file written statement before the learned Tribunal. The appellant did not produce evidence. It was not fault on the part of the respondent. It was fault of the appellant as he failed to produce the evidence before the learned Tribunal. The accident is occurred in the year 2002, since then the respondent – original claimant is waiting for compensation. After filing execution proceedings and issuance of the warrant, the appellant has challenged the order passed by

the learned Tribunal, hence, requested to dismiss the Appeal.

5] I have heard both the learned counsel. Admittedly, the matter before the learned Tribunal is proceeded against the appellant ex parte. The appellant could not deposit the cost amount for filing written statement, hence, written statement of the appellant was not taken on record. The appellant did not produce any evidence nor cross examine the witness of the respondent. Perused the order passed by the learned Tribunal. In para 10 of the said order the learned Tribunal has observed that respondent – original claimant has produced copy of the insurance on record. It is significant to note that when the claimant was aware that the vehicle was insured, then, the Insurance Company was necessary party but the claimant did not add the Insurance Company as party in the Claim Petition. After observing that the Insurance policy is on record, the learned Tribunal has not *suo motu* passed any order to add Insurance Company as respondent and passed

the impugned order against the appellant. The appellant is the Government Authority, the compensation amount which fastened on the appellant is to be paid by the Government, which is public money when vehicle is insured. Then it is necessary to give opportunity to the appellant to put their evidence. The provisions under Motor Vehicles Act applicable to getting compensation are beneficial in nature. This Court in the case of **Shaikh Gani s/o. Shaikh Mainoddin and others Vs. Balaji Allianz General Insurance Corporation Limited and others** reported in 2019 DGLS (Bom.) 812, has held that it is job of the Tribunal to see who is the party responsible to pay the compensation and then issue notice to such party. In the present case, the vehicle involved in the accident was insured. The said fact was brought before the Tribunal. The learned Tribunal should have been added Insurance Company as party respondent. The matter is proceeded *ex parte* against respondent, the respondent must get chance to put his side. In view of the above, I pass the following order :

ORDER

- i] The appeal is hereby partly allowed.
- ii] The judgment and award passed by the learned Member, Motor Accident Claims Tribunal, Shrirampur in MACP No.194 of 2022 is hereby quashed and set aside. The matter is remanded back to the Member, MACT, Shrirampur for fresh hearing.
- iii] The appellant shall file an application for addition of party to the Insurance company. After filing application, the learned Member, MACT, shall decide the said application.
- iv] Needless to say that, opportunity be given to all the parties to lead necessary evidence in addition, if any, if they desire.
- v] As the matter is proceeded *ex parte* against the appellant, the appellant shall pay Rs.20,000/- as cost to the respondent. The appellant has deposited the entire compensation amount before this Court. The respondent is permitted to withdraw Rs.20,000/- out of that deposited amount.

vi] All the contentions of all the parties are kept open.

vii] As the matter is old one, hence, the learned Tribunal is requested to dispose of the claim petition, as early as possible and preferably within 5 months from the date of receipt of this order.

viii] The respondent – original claimant is allowed to withdraw rest of the amount.

ix] Accordingly, First Appeal is disposed of.

[S.G.DIGE]
JUDGE

DDC