

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1403 OF 2022

RAOSAHEB S/O VENKATRAO SHINDE
VERSUS
SANGITA W/O BALAJI @ BALASAHEB KADAM AND OTHERS

...
Advocate for Appellant : Mr. A.N. Nagargoje
Advocate for Respondent No.1 to 6: Mr. B.N. Gadegaonkar
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CORAM : S.G. DIGE, J.
DATE : 5th August, 2022

ORDER :

1. Heard learned Counsel for appellant and learned Counsel for respondents.

2. Being aggrieved and dissatisfied by the judgment and award passed by the Member of Motor Accident Claims Tribunal, Nanded (for short '*the Tribunal*') in M.A.C.P. No.130 of 2015, the appellant has preferred this appeal.

3. It is contention of learned Counsel for appellant that, Claim Petition is proceeded *ex-parte* against the

appellant. Appellant is not original owner of the offending vehicle in spite of that liability is fastened on the appellant. Hence, requested to allow the appeal.

4. It is contention of learned Counsel for respondents – original claimants that, notice was issued to the appellant – original respondent. Though the notice was served but appellant failed to appear before the Tribunal. The Tribunal has observed in order in spite of service of notice appellant - original respondent failed to appear. Hence, the Tribunal proceeded *ex-parte* against the appellant. After considering all facts, the Tribunal has passed the order which is legal and valid.

5. I have heard both the learned Counsel. Perused judgment and order passed by the Tribunal.

6. Admittedly, in Claim Petition filed by respondent – original claimant there was only one respondent i.e. appellant and matter was proceeded *ex-parte* against him. The Tribunal has observed that, though the notice was served upon respondent, he failed to appear hence,

the Claim Petition proceeded *ex-parte* against respondent. It appears from Exh.8 – the Bailiff report that, the information of notice was given to the family members of the appellant and the family members present in the house refused to accept the notice. It is further mentioned in the said report that, the said notice was returned unserved. This report shows that, the notice was not served on the respondent – appellant. Information was given to the old mother and other ladies present in the house. It is not clear if they are family members or not of the respondent – appellant. The liability is fastened on the respondent. In my view, it is necessary to give opportunity to the respondent to put his side hence, I pass following order :-

ORDER

- (a) Appeal is partly allowed.
- (b) The order passed by the Member of Motor Accident Claims Tribunal, Nanded is quashed and set aside.

- (c) Matter is remanded back to the Member of Motor Accident Claims Tribunal, Nanded for fresh hearing by giving opportunity to both parties to lead their evidence.
- (d) Amount deposited by respondents before this Court be transferred to the Tribunal, Nanded.
- (e) The said amount shall be deposited in Fixed Deposit in any Nationalized Bank.
- (f) The Tribunal is directed to dispose of this Claim Petition as early as possible preferably within one (01) year.
- (g) Accordingly pending Civil Applications are disposed of.

[S.G. DIGE, J.]