

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14554 OF 2019

Heena Hakim Shaikh And Others

...Petitioners

Versus

Raju Akbar Pathan And Others

...Respondents

Mr. Mohit R. Deshmukh, Advocate for the petitioners.

Mr. P.M. Nagargoje, Advocate for Respondents No. 1 and 2.

Mr. Abhijeet Chaudhari, Advocate for Respondent No. 3.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 5th SEPTEMBER, 2022

ORDER :

1. Order passed by learned District Judge-1, Aurangabad, below Exhibit-51 in Motor Accident Claim Petition No. 495/2018 is questioned in the present petition.

2. The petitioners are the claimants having filed claim petition on account of death of sole bread earner of the family. After the evidence was led in the claim petition, at the time of final arguments, the petitioners filed application Exhibit-51 seeking permission to lead further evidence and calling two witnesses. Said application was resisted by the respondent/ Insurance Company. The Tribunal rejected the application on the

ground that in spite of having knowledge of the details of panchnama and defence taken in the written statement by all the respondents, after the argument is over, application is filed and the petitioners have failed to file application at earlier point of time. Now for filling up lacuna application cannot be allowed.

3. I have given due consideration to the rival submissions made by the learned advocate for the petitioners and learned advocates for the respondents. Though, it is a fact that the petitioners have filed application for leading further evidence and calling witnesses belatedly, it cannot be ignored that section 169 of Motor Vehicles Act, 1988 is a beneficial legislation and the claim petition is filed by the claimants claiming compensation on account of death of husband of petitioner no. 1, who was the sole bread earner of family.

4. It appears that in the spot panchnama motorcycle no. MH-20 DZ-0132 of Hero company is mentioned, whereas in the First Information Report, MH-20- EP-7666 number is mentioned. Even in the chargesheet registration number of the motorcycle is mentioned as MH-20- EP-7666. It therefore appears that this aspect is inadvertently remained to be noticed

by the petitioners and their advocate while conducting trial before the Tribunal. With a view to give fair opportunity to lead best possible evidence in support of their claim, application filed by the petitioners ought to have been allowed by the Tribunal. The approach of the Tribunal while rejecting the application filed by the petitioners appears to be too technical

5. For the reasons aforesaid this Court is of the considered view that the application filed by the petitioners deserves to be allowed in the interest of justice and for giving fair opportunity to the petitioners to lead evidence.

6. In the result, writ petition is allowed.

7. The impugned order dated 04.11.2019, passed by District Judge-1, Aurangabad, below Exhibit-51 in Motor Accident Claim Petition No. 495/2018, is hereby quashed and set aside.

8. Application Exhibit-51 is allowed.

[NITIN B. SURYAWANSHI, J.]