

Niti

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO.235 OF 2022
AND
MISC. CIVIL APPLICATION NO.236 OF 2022
IN
FIRST APPEAL NO.12 OF 2022

The New India Assurance Co. Ltd. ... Applicant

Versus

Pratima Hari Gaonkar & Ors. Respondents

Ms. Y. Mandrekar, Advocate for the Applicant.

Mr. Milton Marshal, Advocate for the Respondent Nos.1 to 4.

CORAM: M. S. SONAK, J.

DATE : 18th AUGUST 2022

P.C. :

- 1.** Heard Ms. Y. Mandrekar for the applicant – Insurance Company and Mr. Milton Marshal for respondent nos.1 to 4.
- 2.** Misc. Civil Application no.235/2022 is an application to serve respondent no.5 – the driver of the offending vehicle and Misc. Civil Application no.236/2022 is an application to serve respondent no.6, both by substituted service.

3. Normally, there could be no difficulty in allowing these applications. However, Mr. Milton Marshal points out that the appellant – Insurance Company had not obtained any leave under Section 170 of the MV Act. Ms. Mandrekar, however, points out that in this case, the driving licence, based on which respondent no.5 was found to be driving the offending vehicle, was a fake driving licence.

4. Ms. Mandrekar submits that in the above circumstances, the Insurance Company can avoid the liability even though no leave may have been obtained under Section 170 of the MV Act. She, therefore, submits that leave may be granted to serve respondent nos.5 and 6 through substituted service.

5. The issue as to whether the Insurance Company can raise the above defence or not is left open. However, there is merit in the contention of Mr. Milton Marshal that, in the meanwhile, at least 50% of the compensation amount should be released in favour of the claimants.

6. In this case, Mr. Hari Dnyanesh Gaonkar died in a vehicular accident and the claimants are his widow, two minor children and his mother. Without foreclosing any arguments,

normally, even if the plea of the Insurance Company were to be upheld an order for pay and recover is made.

7. Therefore, the applications for substituted service are allowed in terms of prayer clauses 'a' which read as follows:

Misc. Civil Application no.235/2022

(a) Substituted services by publication in local daily in Uttar Pradesh being “Navbharat Times” in Hindi ordered to be effected on the Respondent No.5.

Misc. Civil Application no.236/2022

(a) Substituted services by publication in local daily in Mumbai being “Navshakti” in Marathi ordered to be effected on the Respondent No.6.

8. However, at the same time, the claimants are permitted to withdraw 50% of the compensation amount without prejudice to the rights and contentions of all other parties. The claimant no.1 - Pratima (the widow) and claimant no.4 - Radhabai (mother) will however have to file an undertaking before this Court that such withdrawal will abide by the final orders in the appeal.

9. Subject to filing of the above undertaking the Registry will permit the said claimants to withdraw 50% of the compensation amount.

10. Mr. Milton Marshal states that from out of the withdrawn amount the widow will retain 30%, Radhabai will retain 30% and the balance 40% will be invested in the names of the two minors Haresh and Yash in proportions of 20% each. The Registry to accordingly make the payments. The claimants will also have to submit copies of the Fixed Deposit receipts in the names of Haresh and Yash with Pratima, their mother, as the guardian.

11. For purposes of publication the returnable date will be 29.09.2022. The Insurance Company will have to file affidavit of service publication latest by 07.10.2022.

12. Both the Civil Applications are disposed of in the above terms.

M. S. SONAK, J.

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