

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

**FIRST APPEAL NO. 503 OF 2009
WITH
FIRST APPEAL NO. 506 OF 2009
WITH
FIRST APPEAL NO. 508 OF 2009
WITH
FIRST APPEAL NO. 507 OF 2009
WITH
CIVIL APPLICATION NO. 2646 OF 2020 IN
FIRST APPEAL NO. 506 OF 2009
WITH
CIVIL APPLICATION NO. 2654 OF 2020 IN
FIRST APPEAL NO. 508 OF 2009
WITH
CIVIL APPLICATION NO. 2655 OF 2020 IN
FIRST APPEAL NO. 503 OF 2009
WITH
CIVIL APPLICATION NO. 2638 OF 2020 IN
FIRST APPEAL NO. 503 OF 2009
WITH
CIVIL APPLICATION NO. 2645 OF 2020 IN
FIRST APPEAL NO. 506 OF 2009
WITH
CIVIL APPLICATION NO. 2639 OF 2020 IN
FIRST APPEAL NO. 508 OF 2009
WITH
CIVIL APPLICATION NO. 2644 OF 2020 IN
FIRST APPEAL NO. 507 OF 2009
WITH
CIVIL APPLICATION NO. 2642 OF 2020 IN
FIRST APPEAL NO. 507 OF 2009**

Mr. Mukul Kulkarni, advocate for the Appellants
Mr. V. N. Upadhye, advocate for Respondent No.2 and for the
applicant in Civil Applications.

CORAM : SANDIPKUMAR C. MORE, J.

DATE : 19th June, 2023.

PC :

1 Heard rival submissions.

2 It appears that all these appeals are filed against the judgment of the learned Tribunal i.e. M. A. C. T. Dhule, whereby the petitions of all the appellants-claimants filed under Section 163-A of Motor Vehicles Act have been dismissed by observing that the claimants have to establish negligence of the driver of offending vehicle.

3 However, considering the mandate of Section 163-A of the Motor Vehicles Act, there is no such liability cast upon the claimants to prove the negligence of driver of the offending vehicle. Therefore, all these appeals are required to be remanded for fresh consideration in the light of above observation.

4 The learned Counsel for the Respondent-

Insurance Company, in all these appeals, has also filed Civil Applications for amendment as well as production of additional evidence in the form of documents.

5 The learned Counsel for the appellants strongly opposed these Civil Applications contending that if the matters are remanded back by granting liberty to the Insurance Company to raise plea of amendment as well as additional evidence before the learned Tribunal, the entire aspect of order 41 Rule 27 of the Code of Civil Procedure will be frustrated since the Insurance Company, despite due diligence, could not seek such amendment as well as additional evidence when the trial of the Claim Petitions was going on.

6 However, the learned Counsel for the Respondent-Insurance Company relied upon judgment of Hon'ble Apex Court in the case of **M/s. Chakreshwari Construction Pvt. Ltd. Vs. Manohar Lal**, reported in 2017 STPL 5260 SC, wherein principles applicable for deciding the application

made for amendment in pleadings are discussed.

7 However, this Court is of the view that when the matters are to be remanded back, then instead of deciding the applications filed by the Insurance Company for amendment as well as additional evidence, need not to be decided on merits. On the contrary, liberty can be given to the Insurance Company for raising such plea of amendment as well as permission to adduce additional evidence before the concerned Tribunal.

8 In view of the same, following order is passed:

{i} The impugned judgments and orders under challenge, in all these appeals, namely in MACP Nos. {i} 896 of 2006 dated 16.10.2008; {ii} 893 of 2006 dated 16.10.2008; {iii} 899 of 2006 dated 16.10.2008; and {iv} 895 of 2006 dated 16.10.2008, are hereby quashed and set aside and all the matters are remanded back to the concerned Tribunal i.e. Motor Accident Claims Tribunal, Dhule, for deciding afresh in

accordance with law.

{ii} The Respondent-Insurance Company will be at liberty to raise plea of amendment as well as permission to adduce additional evidence before the aforesaid learned Tribunal by filing appropriate applications and if such applications are filed, the learned Tribunal to decide the same on its own merits. The learned Motor Accident Claims Tribunal, Dhule is directed to decide all these matters as early as possible and preferably within a period of one year after receipt of the same.

{iii} The appeals are accordingly disposed of.

{iv} Pending Civil Applications are also disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

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