

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

**906 CIVIL APPLICATION NO. 15370 OF 2022  
IN FA/1501/2018**

**RAOSAHEB DASRATH KADAM ( DIED ) LRS. TARABAI RAOSAHEB  
KADAM  
VERSUS  
NEW INDIA ASSURANCE CO.LTD., THR ITS AUTHORIZED  
SIGNATORY, AURANGABAD AND OTHERS**

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Advocate for Applicant : Mr. D. K. Dagadkhair  
Advocate for Respondent No.1 : Mr. M. R. Deshmukh  
Advocate for Respondent Nos.2 and 4 : Mr. Muley Amol D.,  
and Mr. G.J. Pahilwan

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**CORAM : SANDIPKUMAR C. MORE, J.**

**DATE : 06.01.2023**

**PER COURT :**

Heard rival submissions. The applicant being the Legal representative of Raosaheb Dashrath Kadam i.e. the original respondent No. 2 and the owner of offending vehicle is seeking permission to produce additional secondary evidence in form of Permit Certificate and other original documents in respect of the offending motor vehicle bearing No. MH-20-W6985.

2. The learned counsel for respondent No.1 in this application i.e. appellant -New India Insurance Company strongly opposed the application on the ground that this Court had in fact appointed Court

Commissioner for recording evidence which the Insurance Company wanted to adduce. The appellant -Insurance Company at the relevant time examined one officer of R.T.O., Aurangabad and the the other officer of Insurance Company. The learned counsel for the present appellant was very much present at the time of recording of such evidence by the said Court Commissioner. Even the roznama maintained by the Court Commissioner indicates that the learned counsel for the present applicant owner was present on 15.01.2022 , but he did not care to cross examine the witnesses called by the Insurance Company. Under Order XLI Rule 27 of the Code of Civil Procedure by seeking the additional evidence can be led, but subject to certain condition. A party, who despite due diligence could not produce the evidence before the trial Court is only permitted to lead the additional evidence. However, in this case there appears no due diligence on the part of applicant.

3. As such, the application stands rejected and disposed of.

(SANDIPKUMAR C. MORE)  
JUDGE

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shp/-