

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

WRIT PETITION NO. 12875 OF 2022

Vaishali Sachin Shinde and others .. Petitioners

Versus

Kunal Nimbalkar and others .. Respondents

Shri Sambhaji S. Wakure, Advocate for the Petitioners.
Shri Rohit H. Dhat, Advocate for the Respondent No. 2.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : 16TH FEBRUARY, 2023.

FINAL ORDER :

. Mr. Dhat, learned counsel appears for the respondent No. 2.

2. By this petition challenge is to the order dated 03rd December, 2022 passed in M.A.C.P. No. 239 of 2017, whereby evidence of the petitioners/claimants came to be closed.

3. M.A.C.P. No. 239 of 2017 was filed by the petitioners/claimants in case of a fatal accident. By an application dated 18th October, 2022, the claimants sought permission to examine an eye witness and the Investigating Officer, which came to be allowed by order dated 15th November, 2022. On 18th October, 2022, the affidavit of evidence of the eye witness was filed and the matter was posted for verification of

the affidavit of the eye witness. On 21st October, 2022, the Presiding Judge was not available and as such matter was posted on 03rd December, 2022. On 03rd December, 2022 as the eye witness was not present, the evidence of the claimants came to be closed.

4. Heard learned counsel for the respective parties.

5. Learned counsel appearing for the petitioners/claimants submits that the affidavit in lieu of examination in chief of the eye witness was already filed and as the Court was not available on 21st November, 2022, the matter was posted to 03rd December, 2022. As such, it is not as if the claimants were delaying the matter. As regards the evidence of the Investigating Officer is concerned, he would submit that as the evidence of previous eye witness was pending, the investigating officer could not be called for recording his evidence.

6. *Per contra*, learned counsel appearing for the respondent No. 2 would vehemently oppose the petition. He would submit that the Tribunal has rightly passed the order considering the conduct of the claimants in as much as inspite of affidavit in lieu of examination in chief being filed, witness was not present on 03rd December, 2022.

7. Considered the rival submissions of the parties.

8. The claim has been raised in case of a fatal accident and in such cases it is trite that lenient view has to be taken. In the present case, claimants are seeking to examine eye witness to the accident and the investigating officer. Both witnesses are independent witnesses. As such it is to be considered that they are not under control of claimants and full opportunity is required to be given to the claimants to prove their case through these witnesses. Affidavit in lieu of examination in chief was filed on 18th October, 2022 and thereafter it was only on 03rd December, 2022 that the witness was not present. It cannot be said that there is considerable delay or that the claimants were not diligent in pursuing with the matter.

9. As regards the evidence of the investigating officer, his examination in chief is required to be conducted after the evidence of the eye witness is over. In my opinion, the impugned order is unduly harsh and unwarranted, especially in the accident claim cases.

10. For the reasons above, the impugned order dated 03rd December, 2022 is hereby quashed and set aside. The writ petition is allowed in above terms. No costs.

[SHARMILA U. DESHMUKH, J.]