

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.1371 OF 2017
WITH
CIVIL APPLICATION NO.37 OF 2023
AND
CIVIL APPLICATION NO.36 OF 2023
IN
FIRST APPEAL NO.1371 OF 2017**

M/s Purushottam Transport ... Appellant/Applicant
Vs.
Ramayan Jangi Chaurasia and ors. ... Respondents

Mr.J.S.Kini with Mr.A. Kini i/by Mr.Suresh Dubey, Advocates for the Appellant/Applicant.
Mr.Ashif H. Husain with Ms.Deepika Oswal, Advocates for the Respondents No.1 to 3.
Mr.A.P.Kulkarni, Advocate for the Respondent No.4.

**CORAM : ABHAY AHUJA, J.
DATE : 14 JULY, 2023.**

P.C. :

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1. Mr.Kini, learned counsel for the Appellant/Applicant submits that he has instructions not to press this application and the application may be disposed as not pressed.

2. Accordingly, this application is disposed of as not pressed.

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3. This is an appeal filed by the owner of the offending vehicle impugning the judgment and award dated 5th January, 2017 passed by the Motor Accident Claim Tribunal, Mumbai in Claim Application No.1692 of 2012 as the Appellant has been solely held liable to pay compensation to the claimants.

4. Mr.Kini, learned counsel for the Appellant would submit that the Tribunal has proceeded to hold that the driver was not possessing a valid driving license and in doing so has shifted the entire burden of proving the breach of conditions on the Appellant. Learned counsel draws the attention of this court to paragraphs No.10 and 14 of the impugned decision to submit that despite the police papers nowhere showing that driver did not have a license and there being no cross-examination of the witnesses, the claim has been awarded against the Appellant.

5. Mr.Kulkarni, learned counsel for the Insurance Company–

Respondent No.4 and Mr.Ashif H. Husain, learned counsel for the original claimant viz. Respondents No.1 to 3 would submit that they also like to rebut the submissions by Mr.Kini and have material to demonstrate the same.

6. Having heard the learned counsel and having perused the grounds as well as the impugned judgment and award, the following order is passed :-

(i) Admit

(ii) Registry is directed to call for record and proceedings within a period of four weeks.

(iii) Let private paper-book be filed within a period of four weeks thereafter with copy to the other side.

7. List on 8th September, 2023 for hearing subject to removal of other office objections.

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8. This Civil Application No.37 of 2023 which is with respect to production of additional evidence would also be considered at the time of final hearing.

9. List on 8th September, 2023.

(ABHAY AHUJA, J.)