

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

**INTERIM APPLICATION NO. 4238 OF 2023  
IN  
FIRST APPEAL NO. 572 OF 2020**

Shital Abasaheb Kasbe and Ors. ...Appellants/Applicants  
Vs.  
The Chairman and Managing Director,  
P.M.P.M.L. ... Respondent

**WITH  
FIRST APPEAL NO. 572 OF 2020**

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Mr. Yogesh Pande for Applicants/Appellants.  
Mr. C. M. Lokeshappa for Respondent.

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**CORAM: ABHAY AHUJA J.**

**DATE : 3 JULY 2023**

**P.C. :**

1. This is an interim application seeking to adduce additional evidence of chargesheet and postmortem report with respect to the accident purported to have resulted in the death of one Abasaheb Kasbe, who was the husband, father and son of the Claimants, the Appellants/Applicants herein in Claim Petition No.540 of 2017, judgment and award dated 8<sup>th</sup> May, 2019 in respect whereof is under challenge in the First Appeal.

2. Mr. Pande, learned Counsel for the Applicants/Appellants would submit that the Tribunal has rejected the claim, recording in paragraphs no. 10 and 11 of the impugned judgment and award dated 8<sup>th</sup> May, 2019, that although it was obligatory on the part of the Applicants to show how the Investigating Officer came to know about the involvement of the Respondent – Corporation's bus and therefore, it was necessary to file a complete copy of the chargesheet to show as to who had seen the accident, names of eyewitnesses and their statements recorded by police. Also it has been observed that the Appellants/Applicants had not filed postmortem report to prove the external and internal injuries and that only document available was the Inquest panchanama and therefore, the non-involvement of the Corporation bus. Paragraphs 10 to 12 of the impugned judgment are usefully quoted as under:-

*“10. Non-applicant has taken defence of non involvement of its bus in this accident and to prove it, driver and conductor of PMPML bus No.MH-12-HB-507 are examined by it as witnesses. They clearly stated that no such accident took place by the said bus. Police registered the offence against driver of bus after 7 days. Both driver and conductor stated that note of accident is taken in accident register maintained in their department after every report of accident but, no such entry is there in that register. Copy of accident register is filed on record at Ex.39. I did not find entry of accident by bus No.MH-12-HB-507 therein on 1.7.2017. Applicants have relied upon copy of*

*report and FIR. In both these documents, registration number of motor cycle and PMPML bus are not mentioned. Offence is registered against unknown motor cycle rider and unknown PMPML bus driver. In spot panchnama also, there is no mention of bus number. Therefore, it was necessary for the applicants to file complete copy of charge-sheet to show as to who had seen the accident, names of eye witnesses and their statements recorded by police. When offence is against unknown vehicles, it was obligatory on the part of applicants to show how Investigating Officer came to know about the involvement of this bus in the accident. Applicant ought to have examined any eye witness to the incidence and Investigating Officer. Admittedly, applicant No.1 is not eye witness. Therefore, her evidence is hearsay and based on police papers only which do not disclose the registration number of bus and motorcycle. No other eye witness is examined to prove involvement of bus in the said accident. On the other hand, non-applicant has examined driver and conductor of said bus as witnesses. They denied the involvement of their bus in the said accident. Their oral evidence is corroborated by copy of accident register at Ex.39.*

*11. Not only this, it is case of applicants that after falling of deceased from bicycle after dash of motor cycle, where of bus ran over the chest of deceased. Applicants have not filed Post Mortem report to prove external and internal injuries. Only document available here is Inquest Panchnama at Ex.23. Now, let us see it. In Inquest Panchnama following injuries on the body of deceased were found.*

- 1) Abrasions over forehead,*
- 2) Abrasion over nose,*
- 3) Abrasions over both shoulders,*
- 4) Abrasion over right side of chest,*
- 5) Abrasions over right knee, hand and leg,*
- 6) Abrasion over back,*
- 7) Abrasion over waist and right side ribs,*
- 8) Blood was oozing from nose.*

*If the story of the applicants that wheel of the bus ran over chest of deceased is accepted, then there should have been*

*crush injuries over chest and there would not have been only abrasions over chest. Such crush injuries are not noticed by police while preparing Inquest Panchnama. Weight of PMPML bus is above 8000 to 9000 kgs. It is heavy goods vehicle. Question of remaining chest intact, does not arise when such heavy weight vehicle runs over chest of human being. Thus, all these facts, nature of injuries clearly point out non-involvement of PMPML bus in the said accident. In death certificate, cause of death is mentioned as "Multiple Injuries".*

*12. Hence, it is proved that deceased died of multiple injuries but, it is not proved that said bus was responsible for his death or there is any negligence on the part of bus driver. Mere filing of charge-sheet is not sufficient. Applicants have failed to prove involvement of bus in the said accident even on touchstone of preponderance of probability. Hence, I answer Issue No.1 as partly proved in respect of cause of death and not proved in respect of involvement of PMPML bus. It is clearly case of hit and run by unknown motor cycle. Hence, non-applicant is not liable to pay compensation to the applicants. Hence, claim is liable to be dismissed. Therefore, I pass following order:-*

**ORDER**

- (1) The claim petition stands dismissed with no order as to cost.*
- (2) Award be drawn up accordingly."*

3. Mr. Pande, learned Counsel for the Appellants submits that the chargesheet and the postmortem report are not new documents, they are statutory public documents and that by bringing them on record, the Applicants would not be creating new facts or bringing any new material on record. Learned Counsel would submit that the entire claim has been rejected due to the absence of these two documents. He would submit that

the Appellants are dependents of the deceased and were fully dependent on him. That the deceased was 24 years old and was working as a care taker-cum-ward boy with Aai Nursing Home Service Bureau and was getting Rs. 12,000/- per month towards salary. He would submit that, therefore, it is important for the Appellants to have their claim considered on the basis of the entire evidence including the chargesheet and the postmortem report.

4. On the other hand, Mr. Lokeshappa, learned Counsel for the Respondent-Corporation refers to the reply dated 29<sup>th</sup> March, 2023 opposing Appellants' Application for adducing the additional evidence. Learned Counsel would submit that the FIR does not bear any date and in fact, the Injury certificate also mentions mere abrasions on the body of the deceased. Learned Counsel would submit that the Applicants are making false statement on oath. The FIR and other documents have not been proved before the Tribunal. Learned Counsel would submit that the entire attempt is nothing but mere excuse on the part of the Appellants to fill up the lacuna in the case before the Tribunal. He would submit that the Applicant No.1 i.e. the Appellant No. 1 had filed her affidavit of examination-in-chief on 1<sup>st</sup> August, 2018 and the impugned decision was delivered on 8<sup>th</sup> May, 2019 and no attempt whatsoever was made by the

Applicants to produce any document as sought to be done by the Applicants by way of this application. Learned Counsel would submit that this application is being filed in the Appeal after a gap of three years. He would submit that the Appeal has been filed in the year 2020 and this application is being filed in the year 2023. Learned Counsel would submit that the impugned order is based on the FIR, Inquest report and panchanama, which were produced by the Applicants. He would submit that the driver of the alleged offending vehicle has been acquitted by the concerned Court on 11<sup>th</sup> January, 2023 and therefore, the Appellants have no case. He submits that the Application, therefore, be rejected.

5. I have heard the learned Counsel for the parties and also perused the Application, reply and the impugned decision. A perusal of the impugned judgment dated 8<sup>th</sup> May, 2019 clearly indicates that both the chargesheet and the postmortem report have not been considered by the Tribunal, whereas the same as per the Tribunal itself should have been produced by the Applicants. There is no dispute that the Applicants are dependents of the deceased Abasaheb Kasbe. The Tribunal has recorded that copy of accident register is filed on record but there is no report of the incident nor there is a mention of the bus number in the FIR or in the spot panchanama. That, it was necessary for the Applicants to file complete

copy of the chargesheet to show as to who had seen the accident, names of eye witnesses and their statements recorded by police. It has also been recorded that it was obligatory on the part of the Applicants to show that how the Investigating Officer came to know about the involvement of the concerned bus in the accident. Further, the Tribunal has also recorded that the Applicants have claimed that after falling of deceased, the wheel of the bus ran over the chest of the deceased, but the Applicants had not filed the postmortem report to prove the external and internal injuries and that the only document available was the Inquest panchanama. On the basis of the Inquest panchanama, the Tribunal has held that the PMPML bus was not involved in the accident.

6. Since the Tribunal has rejected the claim made by the Applicants/Appellants herein holding the case to be a hit and run case by unknown motorcycle and that the Corporation is not liable to pay any compensation to any Applicant, without considering the charge-sheet or the postmortem report which the Tribunal has itself considered necessary, I am of the view that the Application to adduce two documents i.e. the chargesheet and postmortem report be allowed and the same is hereby allowed.

7. Since the Interim Application is in an Appeal impugning the judgment and order of the Tribunal, I deem it appropriate to set aside the judgment and award dated 8<sup>th</sup> May, 2019 and remand it back to the Tribunal to consider the evidence in the form of the chargesheet and postmortem report, with respect to the concerned accident and pass judgment and award within a period of eight weeks from the date of uploading of this order, after affording an opportunity of hearing to the parties.

8. Interim Application and the First Appeal stand disposed in the above terms.

**(ABHAY AHUJA, J.)**