



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

WRIT PETITION NO. 4628 OF 2020

The Divisional Controller Maharashtra State Road Transport Corporation
VERSUS
Jaya Alais Gangasagar Dattatrao Dhawale And Others

Mr. A. D. Wange, Advocate for petitioner
Mr. B. N. Gadegaonkar, Advocate for respondent No.1 to 4

CORAM : R. M. JOSHI, J.

DATE : 10th DECEMBER, 2024

PER COURT :-

1. This petition takes exception to the order dated 27.08.2019 passed below Exhibit 18 moved by the petitioner before the Tribunal seeking impleadment of a driver and owner of motorcycle which was involved in the accident in question.

2. Petitioner MSRTC is respondent in M.A.C.P No. 340/2018. Deceased died in an accident involving State Transport Bus bearing No. MH-09-EM-2296 and motorcycle bearing No. MH-22-AL-1280. Deceased was pillion rider of motorcycle. The claimants who are the legal heirs of deceased, prosecuted MSRTC seeking compensation in respect of the said accidental death of the deceased. MSRTC moved application Exhibit 18 for joining the owner and driver of motorcycle with the contention that the rider of the said motorcycle is responsible for the accident in

question and that a driver of the bus is not responsible therefor. Since, this application rejected, present petition is filed.

3. Learned counsel for the petitioner submits that in order to determine the negligence of the rider of the motorcycle, it is necessary that the said rider as well as owner are made party to the said proceeding.

. This contention is opposed by the learned counsel for the respondent by contending that the respondent/original claimants are dominus litis and that they cannot force to seek relief against undesired parties. He places reliance on the judgment of the coordinate bench of this court in the case of ***Shri. G. Chandrashekharan Shivam And Ors. Versus Mr. Rajkumar Agarwal & Ors., Writ Petition No. 1173 of 2020 and connected matters.***

4. There cannot be any dispute with regard to the proposition of law that it is open for the claimant to recover the entire compensation from one or both joint tortfeasers particularly in accident caused by composite negligence of two vehicles. The judgment of the coordinate bench of this Court is passed, relying upon the judgment of the Hon'ble Supreme Court in the case of ***Khenyei V. New India Assurance Company Ltd, 2015 ACJ 1441 SC.*** Thus, claimant cannot be compelled to joint tortfeasers as a party to the plaint. Thus, there is no substance

in the petition.

5. Dismissal of petition however is required to be done with clarification that in case, the MSRTC succeeds to prove that there was no negligence on the part of the driver of the bus, the entire claim of the claimants may get rejected.

6. In view of the above, petition stands dismissed.

(R. M. JOSHI, J.)

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