

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.913 OF 2024

Satywan Ganpat Dhumal and Ors.

.. Petitioners

Versus

The Oriental Insurance Company Ltd. and Anr.

.. Respondents

.....

- Mr. Hemant Ghadigaonkar a/w. Ms. Pallabi Chatterjee, Advocates for Petitioners.
- Mr. Rajesh Kanojia a/w. Ms. Deepika Modge, Advocates for Respondent No.1.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 11, 2024

P.C.:

1. Heard Mr. Ghadigaonkar, learned Advocate for Petitioners and Mr. Kanojia, learned Advocate for Respondent No.1.

2. With their able assistance I have perused the pleadings and the impugned order passed in Application filed below Exhibit-32 in Motor Accident Claim Petition No.39 of 2018. At the outset it needs to be delineated that Application is filed by the Claimants for seeking conversion of its original claim Petition filed under the provisions of 163-A of the Motors Vehicles Act, 1988 (for short '**the said Act**') to now claim a Petition filed under the provisions of Section 166 of the said Act. What is crucial to be noted are the facts of the present case. The said Application has been filed much belatedly after completion of the cross-examination of Claimants' witness as far back as on 18.03.2022

and the Claimants having closed their evidence by filing *pursis* under Exhibit-30. The Insurance Company also filed *pursis* under Exhibit-31 thereafter stating that they would not adduce any oral evidence and in that view of the matter, the claim Petition was posted for final arguments. At this juncture, the Application for changing the nature of Claim Petition under Section 166 is made by the Claimants. Claimants are the parents and siblings of the deceased.

3. The facts in the present case need to be noted in order to understand why such an application came to be filed on behalf of the Claimant. The provisions under Section 163-A of the said Act have been inserted in year 1994 by Act 54 of 1994 with effect from 14.11.1994 for payment of compensation under a structured formula and basis. Section 163-A(1) and (2) of the said Act been the relevant provisions do not require the Claimants to plead or establish that the death in respect of which claim has been made was due to any wrongful act or default of the owner of the vehicle or vehicle concerned or of any other person. I have heard Mr. Kanojia and with his able assistance perused the pleadings.

4. In the above background, the Claimants in the present case filed the original claim Petition under Section 163-A of the said Act pleading that one unknown vehicle came from the opposite direction in a very high speed, in a rash and negligent manner and dashed to

the motor vehicle driven by the deceased.

5. Despite this very specific pleading in the claim Petition, the Petition was filed under Section 163-A of the said Act claiming compensation under a structured formula. However while filling up the statutory forms appended to the claim Petition it is seen that First Information Report (for short '**FIR**') which was lodged is referred to which does not identify the vehicle with which the accident to the motor cycle of the deceased had taken place. In fact there is no eye witness to the said accident also.

6. In that view of the matter, the fact as to whether the accident occurred due to rash and negligent driving is not proven at all. The Claimants led their evidence on the original Petition under Section 163A and realised that the documentary evidence clearly indicated that there was no other vehicle involved in the accident and rather it was a self accident. To support this theory, spot panchnama recorded by the police before filing of the FIR also did not reveal that there was any other vehicle and it is recorded as an incident not due to any dash by any vehicle coming from the opposite side being driven in rash and negligent manner. It also confirms that there were no tyre marks on the ground to ascertain that there was a vehicle involved in the accident with the motorcycle.

7. Mr. Ghadigaonkar would submit that in view of the aforementioned documentary evidence as also averments in the claim Petition there is possibility that Claimants may fail to prove their case under Section 163-A of the said Act and in that view of the matter, Application seeking the aforesaid amendment for claim under Section 166 was made which is at page No.22, Exhibit-C to the Writ Petition. This Application is filed under Exhibit-32. It seeks registration of claim under Section 166 of the said Act and in support of the said Application only averment is to the effect that Claimants have suffered parental consortium.

8. Learned Court while considering the Application seeking amendment has held that considering the documentary evidence placed on record and the pleadings the proposed amendment seeking relief under the provisions of Section 166 of the said Act would not be necessary for determining the real controversy in question. The learned Trial Court has after hearing the parties in paragraph Nos.5, 6 and 7 returned cogent and reasoned findings based on the trajectory of the witness action of the Claimants' case. In any event, Claimants cannot be allowed to choose their course of action after leading evidence fully and the matter being at the stage of final arguments. This would amount to permit the Claimants to lead evidence once again and improve their case which is not permissible.

9. Considering the fact that Claimant has failed to bring in the proposed amendment before the commencement of the Trial and it has been applied only after the entire witness action is over at time of final arguments, I am in complete agreement with the reasons returned by the Trial Court in the order dated 12.09.2023 and it calls for no interference by this Court whatsoever.

10. Needless to state that if any substantive right that may enure to the Claimants for seeking any just compensation from the learned Trial Court as available to the Claimants in law, arguments on the same are expressly kept open strictly in accordance with law.

11. In view of the above, Writ Petition fails and stands dismissed and is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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