

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

Interim Application No.11529 of 2025
(FOR STAY)

With

Interim Application No.11528 of 2025
(FOR DELAY)

In

First Appeal (st) No.28503 of 2025

Sneha Keshav Parulekar

... Applicant.

V/s.

Sherbahadur R. Singh and Kalawati S. Singh
(deleted since deceased)

Kumar Sherbahadur Singh and others

... Respondents.

Adv. Akshay Naidu along with Adv. Nidhi Chauhan along with Adv. Saloni Satguru.	Advocates for the Applicant/Appellant.
Mr. Sureshkumar Tripathi	Advocate for the Respondents.

Digitally
signed by
LATA
SUNIL
PANJWANI
Date:
2025.09.12
19:06:48
+0530

CORAM : S.M. MODAK, J

DATE : 9th September 2025.

P.C. :

Heard learned Advocate for the Appellant-original opposite party No.2 and learned Advocate for the Respondent-Claimant.

2. As per the Award dated 5th December 2023, learned Chairman Motor Accident Claims Tribunal, Mumbai has held contributory

negligence of the driver of the bus owned by MCGM and the driver of the vehicle owned by the present Appellant. The bifurcation of the liability is 20% and 80% (on this Appellant). The awarded amount is Rs.8,40,000/- + 7.5% interest from the date of application.

3. The claim was resisted by MCGM. The present Appellant though served has not appeared before the Tribunal. The service of notice is disputed. Admittedly, the Tribunal decided the claim after hearing the claimant and MCGM. Today, the matter is for staying the execution. There is execution notice issued. The copy is on Page-42. The amount to be recovered is Rs.11,34,000/-.

4. Learned Advocate for the Appellant made various submissions. They are as follows:

- (a) In the FIR the present Appellant is not named. This is illogical submission because the Appellant is not the driver.
- (b) Copy of FIR is tendered on behalf of the Appellant. Learned Advocate made a submission that there is a difference in description of the vehicle mentioned in the FIR and the description which has come on record before the Tribunal.
- (c) He invited my attention to Para No.16 of the impugned judgment and last 3 lines which reads thus:

“Accordingly there is no rashness or negligence on

the part of the rider of the motorcycle.”

5. He has misunderstood the difference in between the submission and finding. What the Tribunal has held is the submission on behalf of claimant that there is no rashness and negligence on the part of rider of motorcycle is rejected. The Tribunal is expected to appreciate the evidence and come to its own conclusion. The Tribunal is not bound by the submissions made. In this case the Tribunal has rejected submission of the claimant. That is why Tribunal has held that there is a contributory negligence on the part of the driver of motorcycle and BEST bus.

6. One more submission is made on the point of acquittal of the driver of the motorcycle. The judgment is on Page-76. He invited my attention to Para No.12. He submitted that driver is acquitted on 11th July 2013 whereas the impugned judgment is on 5th December 2023. The submission is acquittal judgment is not pointed out to the Tribunal. I am rejecting this contention for few reasons:

- (i) The Appellant was summoned but she has chosen to remain absent.
- (ii) The scope of enquiry before the Tribunal is different from scope of an enquiry in the criminal trial.

7. The above are my *prima facie* observations. Once the Appellant has not appeared before the Tribunal, the scope of this enquiry of appeal is limited. It is submitted that the Appellant is a

Senior Citizen and she is surviving on the pension. At the same time, it is important that the claimants have to receive certain compensation who have lost their family member. There cannot be stay without conditions. Out of 80% liability on this Appellant, I am directing her to deposit Rs.3 lacs. Hence, the following order:

ORDER

- (i) Stay is granted to the execution of the impugned judgment dated 5th December 2023 qua this appellant subject to deposit of Rs.3 lacs before the Tribunal within a period of four weeks from today.
- (ii) The claimant is permitted to file an application for withdrawal before the Tribunal once the amount is deposited.
- (iii) If such application is filed, the Tribunal to allow the claimant to withdraw Rs.2 lacs subject to undertaking.
- (iv) Interim Application stands disposed of.

(S.M. MODAK, J.)