

(1984) 11 BOM CK 0043
In the Bombay High Court

Empreitors Gerais (P.) Ltd.

APPELLANT

Vs

Asha Vishnu Prabhu Chodnekar and Others

RESPONDENT

Date of Decision : 21-11-1984

Acts Referred:

Citation : (1985) 2 ACC 83

Hon'ble Judges : V.V. Vaze, J;C.S. Dharmadhikari, J

Bench : Division Bench

Judgement

V.V. Vaze, J.—As a result of a collision between an Ambassador car No. GDL 3142 and a truck no. MHT 6967 Mr. V.P. Chodnekar, Advocate, having about five years Practies, who was traveling in the car, was killed. The widow and daughter of the deceased filed an Accident Claim Case No. 6 of 1978 before the Motor Accidents Claims Tribunal, Sangli at Sangli. The Tribunal made an award of Rs. 75,000/- against the driver and the owner of the car while an award of Rs. 25,000/- was made against the driver, owner and insurer of the truck viz. Opponents Nos. 1, 2 and 3. The Opponent No. 5 being the owners of the car, have preferred the appeal challenging the finding about the apportionment of damages between the insurer and the owner.

2. During the arguments, it transpired that the driver of the car Pandurang Hari Naik had applied to the Tribunal that he may be permitted to examine himself as his witness, upon which an order was passed by the learned Member of the Tribunal on 21-7-1979 to the effect that the evidence of the driver will be relating to the allegations and contentions raised by him in the Written Statement, and thus he will not be able to lead any evidence relating to the accident.

3. Mr. Kudrolli, on behalf Appellants, places reliance on Rule 298 of the Rules framed under the Motor Vehicles Act, 1939 under which duty has been cast upon the Claims Tribunal to proceed to examine the opposite party if no written statement has been filed and reduce the result of the examination to writing. The scheme of the Motor Vehicles Act, 1939 and the Rules is such that the rigor of the procedure to be followed in a court has been done away with and the strict

rules of procedure followed in the Civil Court are not to be invoked. See Basappa v. K.H. Shrinivasa Reddy AIR 1982 Kar 30. The appellants are therefore right in making grievance of the fact that as the driver did not enter the witness box, their germane piece of evidence relating to the negligence could not be led and the learned Member of the Tribunal fell in error in apportioning the damages between the owner and the insurer.

4. In this view of the matter, we allow the appeal, set aside the order of the learned Member of the Tribunal and remand the matter back to the Tribunal to permit the parties to lead additional evidence as well as cross-examine witnesses already examined. Costs to abide the final result.