
(2009) 10 BOM CK 0008
In the Bombay High Court
Case No : First Appeal No. 1268 of 2009

New India Assurance Company Ltd.

APPELLANT

Vs

Smt. Suman Bhaskar Pawar, Dinesh Pawar, Ramesh Pawar
and Subhash Shinde

RESPONDENT

Date of Decision : 08-10-2009

Acts Referred:

Constitution of India, 1950 — Article 141
Maharashtra Motor Vehicles Rules, 1989 — Rule 254, 259, 260(1), 260(2), 260(3)
Motor Vehicles Act, 1988 — Section 128, 140, 149, 149(2), 166

Citation : (2010) 1 BomCR 319 : (2010) 2 MhLj 177

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : S.G. Chapalgaonkar, for the Appellant; Swapna Bahalkar, for the Respondent

Judgement

R.K. Deshpande, J.—The notice in this appeal was issued on 17th June, 2009 making it clear that the matter is to be decided finally at the stage of admission. On 5th September, 2009, the matter was listed for admission, however none appeared for the respondent No. 4, the owner of the vehicle and hence the matter was again posted for final disposal on 9th September, 2009 to be heard at the end of admission board. The matter was thereafter listed for final disposal at the end of admission board on 14th September, 2009. Shri. S.G. Chapalgaonkar, the Advocate appeared for the appellant insurance company whereas, Miss.Swapna Bahalkar, the Advocate appeared for the respondent No. 3-claimant. None appeared for the respondent No. 4, the owner of the vehicle. Admit. Heard by the consent of parties, finally.

2. This is an Appeal preferred by the Insurance Company-orig respondent No. 2 in M.A.C.P. No. 607/2005 challenging the Judgment and Award dated 17.11.2008 passed by the learned Member, Motor Accident Claims Tribunal, Ahmednagar holding the appellant and the Respondent No. 4 herein, the owner of the truck bearing No. MH-17-K-5292, jointly and severally liable to pay the Respondent

Nos. 1 to 3-claimants, an amount of compensation of Rs. 5,23,000/- inclusive of no fault liability amount, together with interest at the rate of 9% p.a. from the date of petition till its realisation.

3. By the impugned Judgment and Award, the Tribunal has held that deceased Bhaskar Pawar, the husband of the claimant No. 1 and father of the claimant Nos. 2 and 3, died in motor vehicle accident occurred on 07.09.2005 on Nagar Manmad High way near Rahuri Krishi Vidyapeet Gate. It has been held that, the truck bearing No. MH-17/K-5292 owned by the respondent No. 4, was being driven in rash and negligent manner resulting in dash to the Suzuki motorcycle bearing No. MH-16/5843 driven by Bhaskar Pawar, who died. The Tribunal has determined the age of the deceased as 50 years at the time of accident and his income as Rs. 6,000/-per month, from the Tailoring business and agricultural operations. The Tribunal has further held that after deducting the personal expenses the dependancy was of Rs. 4,000/- per month and Rs. 48,000/- per annum. The Tribunal calculated the amount of compensation payable at Rs. 4,88,000/-towards the loss of dependancy, Rs. 10,000/- towards funeral expenses and Rs. 25,000/- towards loss of love and affection and thus total amount of Rs. 5,23,000/-, was arrived at.

4. Shri. Chapalgaonkar, the learned Counsel appearing for the appellant challenged the findings of the Tribunal, firstly, on the ground that the driver of the offending vehicle i.e. Truck bearing No. MH-17/K-5292 was not joined as party to the claim petition and in his absence the Tribunal could not have recorded the finding of negligence on the part of the said driver and the Claim Petition was therefore liable to be dismissed on this sole ground. In support of his contentions, the learned Counsel for the appellant relied upon the para No. 9 of the decision of the Apex Court reported in *The Oriental Insurance Company Limited Vs. Meena Variyal and Others, (Machindranath Kernath Kasar v. D.S. Mylarappa and Ors.)*. He further urged that it was the deceased himself, who was negligent and responsible for accident and the negligence on the part of the driver of the alleged offending vehicle i.e. Truck has not been established. In support of this plea, he relied upon the decision of the Apex Court reported in *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, .* The learned Counsel further urged that at any rate, it was the case of the contributory negligence, more particularly, when the fact indicated that the collision was in the middle of the road and there was no case that the truck driver, was on wrong side. He relied upon the F.I.R. at Exhibit-27/1 and Ex.27/2-Spot Panchanama. He further alleged the violation of Section 128 of the Motor Vehicles Act, 1988 in carrying four persons on the motorcycle at the time of accident. In support of the plea for contributory negligence, he has relied upon the decision of the Apex Court reported in 2008 AIR SCW 2045 (*T.O. Antony v. Karvarnan and Ors.*) (2006) 3 SCC 422 (*Bijoy Kumar Dugar v. Bidyadhar Dutta and Ors.*) and in 2007 AIR SCW 3591 (*Oriental Insurance Co. Ltd. v. Premlata Shukla and Ors.*). It is further the contention raised by the learned Counsel for the appellant that the compensation awarded is exorbitant, the Court should

have assessed the compensation payable on notional basis and there was no evidence on record to substantiate the findings regarding the quantum of compensation awarded by the Tribunal.

5. As against the aforesaid contentions, the learned Counsel for the claimants Miss. Swapna Bahalkar has supported the findings of the Tribunal. She has urged that the finding of fact has been recorded by the Tribunal after taking into consideration the entire material available on record holding that the driver of the offending vehicle i.e. Truck was rash and negligent. She further urged that it was not the plea raised that the driver was necessary party, no issue was framed and there was no opportunity to the claimant to join the driver, as necessary party. She relied upon an unreported Judgment of this Court delivered on 14.09.2009 in F.A. No. 3839/2008 (National Insurance Co. v. Vachista). It was further urged that the question of contributory negligence does not arise and the assessment of income of the deceased was also based upon the evidence.

6. With the assistance of the learned Counsels appearing for the parties, I have gone through the Record and Proceedings. The undisputed factual position, as it appears from the record is, that the accident in question occurred on 07.09.2005 at about 9 p.m. The F.I.R. is lodged on 07.09.2005 itself, which is at Exhibit-27/1. The spot panchanama and inquest panchanama was conducted on 08.09.2005 and same are at Exhibit-27/2 and 27/3 respectively. On 08.09.2005, the statement of the claimant No. 1 Smt. Suman was recorded by Police. The Claim Petition was filed on 09.12.2005. The respondent No. 4, the owner of the vehicle did not file his written statement. The insurance company filed its written statement at Exhibit-13 on 04.03.2006. The Tribunal framed the issues on 11.06.2008 at Exhibit-17 as under:

- (i) Whether the petitioners prove that deceased died in motor vehicular accident dated 07.09.2005?
- (ii) Whether the petitioners prove that truck bearing No. MH-17/K-5292 and Suzuki motor cycle bearing No. MH-16/5843 have been involved in the accident?
- (iii) What is just and reasonable amount of compensation and against whom it is to be awarded?
- (iv) What Order and Award?

On 15.09.2008, the Tribunal granted permission to the appellant insurance company, as required by Section 170 of the Motor Vehicles Act, 1988. On 15.09.2008 itself, the claimant Smt. Suman examined herself at Exhibit-22 and closed her evidence. On 21.10.2008, the appellant insurance company filed pursis at Exhibit-32 stating that it does not want to lead any evidence. The matter was finally heard by the Tribunal on 05.11.2008. One more thing which is required to be noted is, that there was one additional issue No. 2A was framed as under:

2A. Whether, the deceased was negligent in driving motorcycle No. MH-16/5843,

if yes, to what extent?

It seems that aforesaid issue was framed on 05.11.2008, however, whether it was framed prior to hearing or not is not clear, as the order sheet/roznama does not refer to framing of such issue. Be that as it may, no argument was made nor issue was ever framed as to whether driver of the offending vehicle was necessary party. There was neither a finding recorded by the Tribunal that driver was not the necessary party to the proceedings nor that in the absence of driver, a finding could be recorded about negligence of the driver. However, the fact remains that the stand was taken in written statement by insurance company that the driver was necessary party to proceedings and petition has to be dismissed for non-joinder of necessary party.

7. In the background of the aforesaid facts, the question which falls for consideration in this case is whether, the driver of the offending vehicle i.e. truck bearing No. MH-17/K-5292 was necessary party to the claim petition, particularly when there are averments made in the claim petition about the rash and negligent driving on his part and whether, in absence of the driver of the offending vehicle before the Tribunal in claim petition, the finding regarding the negligence on his part could be recorded. It is not in dispute that the driver of the offending vehicle has neither been joined as party to the proceedings in claim petition nor has been examined as witness by any of the parties. The first decision relied upon by the learned Counsel for the appellant Shri. Chapalgaonkar, is the decision of the Apex Court in Meena Varial's Case cited supra and the para No. 9 of the said Judgment, to the extent relied upon by the learned Counsel for the appellant, is reproduced below:

Before we proceed to consider the main aspect arising for decision in this Appeal, we would like to make certain general observations. It may be true that the Motor Vehicles Act, insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves u/s 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. Therefore, under general principles, one

would except the driver to be impleaded before an adjudication is claimed u/s 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver. Why should not a Tribunal insist on the driver of the vehicle being impleaded when a claim is being filed? As we have noticed, the relevant provisions of the Act are not intended to jettison all principles of law relating to a claim for compensation which is still based on a tortious liability. The Tribunal ought to have, in the case on hand, directed the claimant to implead Mahmood Hasan who was allegedly driving the vehicle at the time of the accident. Here, there was also controversy whether it was Mahmood Hasan who was driving the vehicle or it was the deceased himself. Surely, such a question could have been decided only in the presence of Mahmood Hasan who would have been principally liable for any compensation that might be decreed in case he was driving the vehicle.

This was the case where the question was whether the deceased driver was covered by the insurance policy produced on record. Undisputedly, the policy produced was an "Act Policy" and there was no special contract to cover the risk, even if he was treated as owner or driver of vehicle. The Apex Court held that the deceased himself was driving the vehicle and was not third party and hence, the insurance company is not liable to indemnify the insured and was therefore not obliged to satisfy the award of the Tribunal or Court. The Apex Court specifically observed that, the High Court did not reverse the finding that deceased himself was driving the vehicle and that there was no finding that Mahmood Hasan, the another employee of the owner was driving the vehicle. Admittedly, Mahmood Hasan was not joined as party to the proceedings and even if he was, there was no finding that he was negligent in driving vehicle. In view of this, in fact the question whether the driver was necessary party to the proceedings did not arise for consideration of the Apex Court and hence as is apparent from the observations above, that the Tribunal ought to have directed the claimant to implead Mahmood Hasan as party, were general in nature and not on the issue, which arose for the consideration and decided by the Apex Court. It does not lay down a law that the driver of the offending vehicle in all cases, a necessary party and in his absence the judgment and award in claim petition shall vitiate. In this context, the decision of Apex Court reported in The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another, rendered on the law of precedent needs to be seen. The para 23 of the Judgment, which is relevant is reproduced below:

23. So far as Nagesha's case relied upon by the claimant is concerned, it is only to be noted that the decision does not indicate the basis for fixing of the quantum as a lump sum was fixed by the Court. The decision ordinarily is a decision on the case before the court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the court dealing with it should carefully try to ascertain the principle laid down by the

previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as a measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expressions carry no weight at all, nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority.

It was a decision rendered on provisions of Motor Vehicles Act. Applying the law of precedent, pronounced by Apex Court as above, it will have to be held that the observations in para 9 of the Judgment of Apex Court in Meena Varial's case cannot constitute precedent under Article 141 of the Constitution of India. The same are therefore of no help to the applicant.

8. The learned Counsel Miss. Swapna Bahalkar appearing for the claimants has relied upon the decision of the Orissa High Court reported in Yudhistira Sethi and Another Vs. National Insurance Co. Ltd. and Another, , in which the learned Single Judge of Orissa High Court at Cuttuck has distinguished the case, after quoting the observations made in para No. 9 in Meena Varial's Case, in paragraph Nos. 11, 12 and 13 of the Judgment which are reproduced below:

11. The impleadment of the driver was required to be done in the above cited case, in the context of a controversy regarding the person who drove the vehicle. In that case, there was no finding about the person who drove the vehicle. It was further observed that even if there was finding, no evidence to show his negligence. Therefore, the facts are different in this case, as the investigating agency had fixed the driver and his negligence and filed chargesheet against him.

12. True it is that it is desirable if the driver of the vehicle is impleaded in order to primarily fix his liability so as to fasten it upon the owner of the vehicle. On perusal of the entire judgment of the above mentioned case, I find that there is no dictum making it imperative to implead the driver as party even when owner himself admitted the liability of the driver who had been fixed, as in the present case.

13. It may be for the reason that in case of driver's liability, the owner of the vehicle will be coming to the shoes of the driver himself and the owner will have to defend the cause of the driver in all times, in order to escape from vicarious liability. So the driver even if, impleaded as a party may remain as ex parte because of the situation that the owner in order to defend himself has to necessarily defend the driver. Therefore, as owner himself is available, he may have to defend the cause of the driver and in that way, the driver's non-

impleadment in the present facts of the case, may not deprive the rights of the claimants.

9. Miss.Swapna Bahalkar, the learned Counsel appearing for the claimants then relied upon the unreported judgment of this Hon?ble Court delivered on 14.09.2009 in First Appeal No. 3839/2008 (National Insurance Co. Ltd. v. Vachista S/o Dnyanoba Karad and Anr.) and urged that, such contention that the driver was necessary party in the claim petition was rejected. It is the judgment, which I have delivered and the Judgment of the Apex Court in Meena Varial?s case has been referred. There is specific finding that neither the question, whether the driver was necessary party to the proceeding was raised before the Tribunal nor any issue was framed in respect thereof, nor was there any adjudication on this point by the Tribunal. It was held that the judgment of the Apex Court in Meena Varial?s case was not applicable, as the point was neither raised nor it can be permitted to be raised for the first time in the appeal. In view of this, it can not be said that this Court had laid down a law in the said judgment that the driver of the offending vehicle was not necessary party in a claim petition u/s 166 of the Motor Vehicles Act, 1988. Here, in this case, this question is specifically raised in the written statement of insurance company. Hence, the Judgment which I have delivered and relied upon the learned Counsel, is distinguishable and not applicable in this case.

10. The next judgment relied upon on this issue by Shri. Chapalgaonkar, the learned Counsel appearing for the appellant is the decision of the Apex Court in Machindranath?s case cited supra. It was the case whether there was collision between the bus and truck bearing No. CAM 6939 in which the driver of the bus, belonging to Karnataka Road Transport Corporation, was injured and he filed claim petition alleging the rash and negligent driving, on the part of the driver of the truck. The driver of the truck was not made party to the claim petition, but was examined as witness. The Apex Court has held that the driver of the truck was not necessary party to the claim petition and in his absence, the entire proceedings shall not be vitiated, as the owner of the vehicle was a party in his capacity as joint tortfeasor. In view of this, the contention of Shri. Chapalgaonkar that the driver of the offending vehicle is necessary party in a claim petition filed, alleging rash and negligent driving on the part of the offending vehicle, stands rejected and it is held that the driver of the offending vehicle is not necessary party in a claim petition.

11. The next contention of Shri. Chapalgaonkar is that though the driver of the offending vehicle may not be a necessary party to the claim petition, still in view of the judgment of the Apex Court in the Machindranath?s case, cited supra, to make a finding on negligent without involving the driver as at least witness, would vitiate the proceedings not only on the basis of the fact that driver has not been given an opportunity to make a representation, but also because the evidence to make a finding regarding negligent, would necessarily be inadequate. He further states that the said Judgment lays down that without deposition on

the part of the driver of the offending vehicle and without his involvement at least as witness, the adverse finding on negligent can not be made against him. He further urged that the driver would thus be a proper party to the proceedings. I am of the view, that this contention needs to be accepted. In *Machindranath's* case, the Karnataka High Court took the view that under law of Torts, the owner and driver of the Motor Vehicle being joint tortfeasors, are jointly and severally liable for the negligence of the driver and the claimant can sue either the owner or driver or both. It was further held that whether driver is impleaded or not, an owner (master) can be made vicariously liable for the acts of his driver (servant) only by proving negligence on the part of driver (servant). The Apex Court did not agree with this and it was held that the driver is primarily liable and owner would be liable, as he permitted the use thereof and it would not mean that they are joint tortfeasors in the sense, it is ordinarily understood. It was thus held, that by virtue of the fact that the cause of action is the same, evidence is the same, it would follow that this evidence must necessarily include an examination of driver who is primarily liable. It was held, that to make a finding on negligence without involving driver, at least as witness would vitiate the proceedings. The contention is therefore accepted.

12. The judgment of Division Bench of Karnataka High Court, was the subject matter of challenge before the Apex Court in the *Machindranath's* case cited supra. The Karnataka High Court relied upon, the provisions of Rule 235 of the Karnataka Motor Vehicles Rules, 1989 which is reproduced below:

Rule 235: Notice to the parties involved:

(1) The Claims Tribunal shall on an application made to it by the appellant sent to the owner or the driver of the vehicle or both from whom the applicant claims relief and the insurer, a copy of the application, together with the notice of the date on which it will dispose of the application, and may call upon the parties to produce on that date any evidence which they may wish to tender.

(2) Where the applicant makes a claim for compensation u/s 140, the Claims Tribunal shall give notice to the owner and insurer, if any, of the vehicle involved in the accident directing them to appear on the date not later than 10 days from the date of issue of such notice. The date so fixed for such appearance shall also be not later than fifteen days from the receipt of the claim application filed by the claimant. The Claims Tribunal shall state in such notice that in case they fail to appear on such appointed date, the Tribunal will proceed ex parte on the presumption that they have no contention to make against the award of compensation.

It was held by the Karnataka High Court that neither Motor Vehicles Act nor Rules thereunder require the driver to be impleaded as party to the claim petition. The Apex Court held that we are not required to lay down a law that even in absence of any rule, impleadment of driver would be imperative. Thus, where there are specific rules involving the driver in a claim petition in a

particular manner then matter would be governed by such rules and its compliance will have to be shown. If there are no rules of impleadment of driver, then the involvement of driver will be governed by law in Machindranath's case. The Apex Court further observed, that in the light of provisions of Section 168 of the Motor Vehicles Act, which mandatorily requires the Tribunal to specify the amount, which shall be paid by the owner or driver of the vehicle involved in the accident or by or any of them, the driver should be impleaded as party in the proceedings. Thus, no decree or award can be made personally against the driver of the vehicle, unless he is involved in claim petition either as party or at least as witness.

13. In this respect, the provisions of Maharashtra Motor Vehicles Rules, 1989 are required to be seen. The Rule 254 deals with the application for compensation arising out of accident and states that such application shall in Form Comp. "A" of the 1st Schedule to these Rules with particularly specified in that Form. Perusal of the Form Comp."A" indicate that the parties to be joined in the claim petition shall only be the owner of the vehicle and insurer as opponents. Thus, neither the Rules nor the Form for application for compensation require the claimants to join the driver of the offending vehicle as party to the proceedings. The Rule 260(1), (2) and (3) of the Maharashtra Motor Vehicles Rules, 1989 is reproduced below:

Rule 260. Notice to the parties involved: (1) If the application is not dismissed under Rule 259, the Claims Tribunal shall, send to the owner or the driver of the vehicle or both involved in the accident and its insurer, a copy of the application, and the annexures thereto together with the notice of the date on which the parties shall enter their appearance either in person, or through their duly authorised agents, and may also file their written statement, if any, with additional copies of the same, for being furnished to the other parties connected with the matter. It will dispose off the application, and may call upon the parties to produce on that date any evidence which they may wish to tender.

(2) The service of the notice shall be effected on the owner, the driver and the insurer of the vehicle in question, as the case may be, by way of personal service, through the bailiff or by Registered Post A/D or both.

(3) Whether the applicant makes a claim for compensation u/s 149, the Claims Tribunal shall give notice to the owner and insurer, if any, of the vehicle involved in the accident directing them to appear on the date, not later than fifteen days from the date of issue of such notice. The date so fixed for such appearance shall also be not later than fifteen days from the receipt of the claim application filed by the claimant. The Claims Tribunal shall state in such notice that in case they fail to appear on such appointed date, the Claims Tribunal shall proceed ex parte on the presumption that they have no contention to make against the award of compensation.

14. The aforesaid Rule 260(1), states that the Claims Tribunal shall, send to the

owner or driver of the of the vehicle or both involved in the accident and its insurer, the copy of the application, and annexures thereto, together with notice of the date on which the parties shall enter their appearance, either in person or through their duly authorised agents and may also file their written statement, if any, with additional copies of the same, for being furnished to the other parties connected with the matter. The Sub-rule (2) of Rule 260 requires that the service of notice shall be effected on the owner, driver and insurer of the vehicle in question, as the case may be, by way of personal service through bailiff or by Registered post A/D or both. Thus, both the provisions of Sub-rule (1) and (2) are mandatory and are required to be followed by the Claims Tribunal, to involve the owner, driver and insurer of the vehicle in question, in the manner prescribed. It is in the light of this, the Claims Tribunal has to pass an award u/s 168 of the Motor Vehicles Act, 1988 as to the amount of compensation to be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or in all them, as the case may be. It is not necessary that in every case, where the driver of the offending vehicle is found to be rash and negligent in driving vehicle, that he shall be held liable to pay compensation. It will depend upon the facts and circumstances of each case and instead, the Tribunal may direct only the owner and the insurer of the vehicle to pay the compensation, however, the involvement of driver in accordance with rules, in claim petition would be must.

15. The next question would be whether after compliance with aforesaid provision, will it be necessary to examine the driver of offending vehicle as witness ? It is for the parties to decide in the facts and circumstances of the case, whether to examine the driver as witness to prove either negligence or to prove breach of policy or any defence u/s 149(2) of said Act, since it will be the question of burden of proof and the quantum of proof. However, in such situation, the proceedings of claim petition cannot vitiate on the ground of non-involvement of the driver of offending vehicle.

16. In view of the above, my findings on all aforesaid aspects are summarised are as under:

(i) Meena Varial's Case decided by the Apex Court does not lay down a law that driver of offending vehicle is necessary party in all cases and in his absence, the Judgment and Award shall vitiate.

(ii) In an unreported Judgment of this Court in First Appeal No. 3839/2008 (National Insurance Co. Ltd. v. Vachista) decided on 14.09.2009, it has not been laid down that driver of the offending vehicle was not necessary party, in case of claim petition under Motor Vehicles Act.

(iii) In Machindranath's case the contention that, the driver of the offending vehicle was necessary party in a claim petition and in his absence the entire judgment and award would vitiate, has been rejected.

(iv) In view of the Judgment of the Apex Court in Machindranath's case, the driver of the offending vehicle would be a proper party or he should at least be

examined, as witness on the allegations of rash and negligent driving on his part and without his involvement, no adverse finding on negligence can be made against him and if any such finding is recorded, same would vitiate the proceedings.

(v) No decree or award can be made personally against the driver of the offending vehicle unless he is involved in a claim petition either as party or at least as witness.

(vi) If there are specific rules involving the driver in a claim petition in particular manner, then the matter would be governed by the said rules and its compliance will have to be shown.

(vii) The requirement of Rule 260(1) and (2) of the Maharashtra Motor Vehicles Rules, 1989 is mandatory and the Tribunal shall send to the owner or driver of the vehicle or both, involved in the accident and its insurer, a copy of the application and annexures thereto, together with notice of the date on which the parties shall enter their appearance.

(viii) The service of notice shall be effected on owner, driver and insurer of the offending vehicle in question, as the case may be, by way of personal service, through the bailiff or by Registered Post A/D or both, as the Tribunal may deem fit and proper.

(ix) If the driver or owner or insurer of the offending vehicle does not respond to the notice so issued and duly served, the Tribunal may proceed ex parte and pass an award against any of them or all of them and the proceedings shall not vitiate for not calling a driver and examining him as witness.

In view of all aforesaid findings, it is not necessary to consider other grounds of challenges along with the judgments cited by the learned Counsels for the parties. What is required to be done now in the instant case is, to set aside the judgment and award passed by the Tribunal on 17.11.2008 in M.A.C.P. No. 607/2005, which is impugned in the present Appeal, on the ground that there is non-compliance of mandatory requirement of Rule 260(1) and (2) of the Maharashtra Motor Vehicles Rules, 1989 with further directions to follow the mandate of Rule 260(1) and (2) of the Maharashtra Motor Vehicles Rules, 1989 by sending to the owner or driver of the vehicle or both involved in the accident, a copy of application and annexures thereto, together with a notice of date on which they shall enter their appearance. Such notice shall be sent either through bailiff or by registered post acknowledgment due or both, as Tribunal deems fit and proper.

17. In the result, appeal is partly allowed and the judgment and award dated 17.11.2008 passed by the learned Member, Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claims Petition No. 607/2005, is quashed and set aside. The matter is remanded back to the said Tribunal for holding de novo trial after issuing notices to the owner and driver of the vehicle i.e. truck bearing No.

MH-17/K-5292 involved in the accident, in accordance with Rule 260(1) and (2) of the Maharashtra Motor Vehicles Rules, 1989 in a manner stated above. The Tribunal shall leave it open to the parties to call the driver and examine him as witness, if they choose to do so. The proceedings shall be concluded within a period of six months from the date of receipt of this judgment. There shall be no order as to costs. The learned Counsel for the appellant states that an amount of Rs. 2,24,360/- has been deposited in this Court. The same shall be remitted back to the Motor Accident Claims Tribunal, Ahmednagar, which shall pass appropriate orders in respect thereto in accordance with its decision, which shall be delivered.