



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 692 OF 2023

1. Shri. Mohandas Vinayak Naik,
Son of Vinayak Naik,
Aged 56 years, driver
 2. Smt. Shaila Mohandas Naik,
Wife of Mohandas Naik,
Aged 46 years, housewife,
Both residents of H. No. 483,
Haldai, Vazem, Shiroda,
Ponda, Goa, 403103.
- ... Petitioners

Versus

1. Shri. Dattaraj Tukaram Gaude,
Son of Tukaram Gaude,
Aged 25 years, businessman,
Resident of H. No. 1669, Palwada, Tiska,
Usgao. Ponda, Goa 403406
(Owner and Driver of
Maruti Swift No. GA-05-F-1348)
2. Bajaj Allianz General Insurance Company Ltd.
112, 113, First Floor, Guru Sai Plaza,
Near Adarsh School, Pajifond,
Margao, Goa 403601.
(Insurer of Maruti Swift
No. GA-05-F-1348)

3. Shri. Harish Kumar B. G.

Son of Gangadharappa,
Prop. Byrava Cargo Movers,
Aged 41 years, driver,
Resident of Mandigere Post,
Nelamangala Taluka,
Bangalore, 562123.
(Owner and Driver of Tata
Vehicle No. KA52-A-5699).

4. HDFC Ergo General Insurance Co. Ltd.

25/1, 2nd Floor, Building No. 2,
Shankarnarayan Building,
MG Road, Bangalore, 560001.
(Insurer of Tata Container No. KA-S2 A-5699)

5. ICICI Lombard General Insurance Co. Ltd.

Office No. 101, First Floor,
Kamat-Tower, Opp. KTC Bus stand,
Panaji-Goa 403001.

... Respondents

Mr. R. G. Ramani, Senior Advocate with Mr. Pranav Kakodkar,
Advocate for the Petitioner.

Mr. Amey Kakodkar with Mr. Pankaj Shirodkar, Advocates for
Respondent No. 2.

Mr. Vaman Kurtikar, Advocate for Respondent No. 4.

Mr. James Lopes with Ms. Gauri Borkar, Advocates for
Respondent No. 5.

CORAM : VALMIKI MENEZES, J.

RESERVED ON : 2nd SEPTEMBER, 2025

PRONOUNCED ON : 12th JANUARY, 2026.

JUDGMENT:

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith and with the consent of the parties; the petition is finally heard and disposed of. Learned Senior Advocate Mr. R. G. Ramani waives service on behalf of the Petitioners, learned Advocate Mr. Amey Kakodkar waives service on behalf of Respondent No. 2, learned Advocate Mr. Vaman Kurtikar waives service on behalf of Respondent No. 4 and learned Advocate Mr. James Lopes waives service on behalf of Respondent No. 5
3. This Petition impugns order dated 10.08.2023, passed by the Motor Accidents Claims Tribunal, at Margao (MACT) in Claim Petition No.88/2022, whilst allowing an Application dated 09.03.2023, made by the Respondent No.2 (Insurance Company) for dropping/deleting itself as Respondent No.2 in the Claims Petition. The Petitioners are the Original Claimants.

4. On 14.08.2022, a motor accident occurred at the Sugar Factory, Dharbandora, involving a Maruti Swift Car bearing No.GA-05-F-1348 driven by Respondent No.1 and a Tata Container bearing No. KA-S2-A-5699, driven by Respondent No.3. The Petitioners herein filed Claim Petition No.88/2022 in the (MACT), at Margao on 24.11.2022, against the Respondent No.1 to 4 under section 166 of the Motor Vehicles Act, 1988 (MV Act for short) along with an Application under section 140 of the Motor Vehicles Act.

5. Thereafter, the Respondent No.2 filed an application for dropping/ deletion of Respondent No.2 from this matter, stating that on the date of the accident, the insurance policy of the Respondents No.1's vehicle was for own damage and not for third party liability and therefore it was not liable and had been wrongly impleaded. On 23.03.2023, the Claimants filed their reply to the application dated 09.03.2023 and disputed the contention of the Respondent No.2, that it was not liable to compensate for own damage, and submitted that this fact cannot be determined without proof of the terms contained in the policy.

On the same day the Respondent No.1 (Driver of the vehicle) filed his Written statement contending that besides Respondent No.2 (Insurance Company, Bajaj Alliance) the

vehicle was also insured with Respondent No.5 (Insurance Company, ICICI Lombard); notice was issued by the MACT to Respondent No.5 Insurance Company on 04.04.2023, which on being served on 04.07.2023, put in appearance only on 30.11.2023. This Insurance Company was yet to file its Written Statement at the time the impugned order was passed.

6. On 08.06.2023, the Respondent No.4 (Insurance Company HDFC Ergo) filed its written statement stating that it is liable to pay compensation only in the event it was proved that the accident was caused due to fault and negligence of Respondent No.3, without breach of terms and conditions of the insurance policy.

7. On 04.07.2023, the Respondent No.2, filed its Written Statement and, whilst denying its liability, contended that the vehicle of Respondent No.1 was insured under “Standalone Own Damage Cover for Private Car” and third party liability was insured with the Respondent No.5. It further contended that it was not liable to compensate the Claimants.

8. The MACT, after hearing the Petitioners and Respondent No.2, vide its order dated 10.08.2023, allowed the Respondent No.5 to be impleaded as a party to the Claim Petition and also

passed an order on the same day deleting the Respondent No.2 as a party from the Petition, the said order is Impugned herein.

SUBMISSIONS:

9. The Advocate for the Petitioner, Learned Senior Advocate Mr.R.G Ramani, submitted that the Respondent No.2 could not have been dropped at the initial stage of the proceedings when pleadings were not completed, as the Respondent No.5 Insurance Company was not served nor was its written statement filed; the issues were yet to be framed and evidence was yet to be recorded. He further submitted that the impugned order and application on which it was passed, was premature as the Respondent No.2 could only be dropped or deleted after recording evidence of both the insurance companies and the Petitioners.

10. Per contra the Advocate for the Respondent No.2 Mr. Amey Kakodkar submitted that since the vehicle of the Respondent No.1 was insured only for own damages and was not insured to cover third party risk, the deletion of Respondent No.2 was valid as it was wrongly impleaded. It was further contended that the provisions of Order I Rule 10 CPC permit a court to drop or to implead parties to a proceeding at any stage, consequently the MACT would not record evidence to decide whether the Respondent No.2 could be dropped; he further contended that the

MACT was within its jurisdiction to examine the insurance policy and decide whether the respondent No.2 was liable to pay, and may drop any Respondent without waiting for trial. Reliance was placed on the following case laws;

- i. Bimlesh and Others V/s New India Assurance Company Limited¹.*
- ii. Om Prakash Jaiswal & Ors V/s Manish Kumar & Ors, reported in²*

CONSIDERATION:

11. Chapter XII of the Motor Vehicles Act, 1988, (the Act for short) provides for constituting and appointing Claims Tribunals to adjudicate upon claims for compensation in respect of accidents involving death, bodily injury or damage to property, arising out of the use of motor vehicles. Claims tribunals are constituted under Section 165 of the Act to decide various proceedings for compensation. Section 168 requires that every application for compensation made under Section 166 be decided after the parties are heard and an inquiry is held into the claim; an award determining the compensation is to be passed after an

¹ (2010) 8 SCC 591

² 2023 SCC OnLine Del 5506

inquiry. The procedure and powers vested in the Tribunals, whilst holding inquiries under section 168, are specified in section 169, under which the Tribunals are vested with powers of Civil courts for taking evidence on oath and for enforcing attendance of witnesses. These powers and procedure are regulated by, and subject to rules that may be framed; the power to make such rules is vested in the State government under section 176.

12. The Government of Goa, in exercise of the rule making power under section 176 of the Act, has framed the Goa Motor Vehicles Rules, 1991, (the Rules for short) in which, Chapter VIII thereof, provides for the procedure to be followed by the Tribunal, whilst conducting inquiries in a Claim Petition under section 166, and specifies the powers of a civil court, conferred under the Code of Civil Procedure, 1908 vested in the Claims Tribunal. Rule 275 to Rule 305 provides for the procedure and the powers vested in the Tribunal.

13. Rules 275 to 278 provides for the procedure in filing applications both under sections 165, 166 and 140 of the Act. Section 279 and 280 provides for examination of the applicant on oath and dismissal of the application before notice to the parties if no case is made out by the applicant. After considering the application and the statement on oath, Rule 281 provides for issuance of notice to the parties from whom compensation is

claimed, whilst Rule 282 provides for filing of written statement by the respondents and in case of contest, powers are vested in the Tribunal to examine the claimant and their witnesses, while Rule 282 provides for summoning of these witnesses. Rule 288 provides for the method of recording evidence whilst rule 291 mandates the Tribunal to consider the written statement, evidence of the witnesses examined and to frame the record of the issues upon which the decision would depend. The judgement and award is to be passed in the form specified in Rule 295 and 296. Rule 300 provides for the specific provision of CPC which are extended to the Tribunal whilst holding inquiries. Rule 301 directs the Tribunal to conduct summary procedure in case of minor accidents whilst Rule 303 provides for Appeal to the High Court against the Award of the Tribunal.

14. Under Rule 300, it is only some of the provisions of the Code of Civil Procedure, 1908 that have been applied to proceedings before Claims Tribunals, notably being some of the Rules of Order V to Order XIV, Order XVI to XVIII, Order XX, XXI, XXIII, XXIV, XXVI to XXX, XXXII, XXXVII and XXXIX. The provisions of Order I Rule 10 CPC, which empowers a Civil Court to implead parties or drop parties to the proceedings are not made applicable to the procedure to be followed by Claims Tribunal under the said Rules.

15. Going through the scheme of the aforementioned Rules and of the Act, as are applicable to the Claim Petitions, the Tribunal is not vested with powers to decide the pleas raised by different parties individually, without evidence being recorded and without an inquiry being held into the rival contentions. The Tribunal would be obliged to take on record, pleadings of all parties to the Claim Petition, and depending on the defences taken by each of the parties, would be required to frame issues and direct the parties to lead evidence on their rival claims/defences. It is only after completion of the inquiry, and after all evidence is recorded, which includes in the present case, tendering of the contract of insurance produced by each of the Insurance companies, that the Tribunal could decide whether an Insurer is liable to pay compensation, under the contract. My view finds support in two Judgments which are referred to in subsequent paragraphs.

16. In *Bimlesh* (supra), in a Claim Petition, the Insurance Company took a plea in its written statement that it was required to indemnify the owner of the vehicle only in case of third party loss. The Claims Tribunal heard the parties on a preliminary question of maintainability of the Claim Petition and held, on examining the insurance policy, that the Claim Petition was not maintainable. Making reference to the provisions of Sections 168 and 169 of the Act, the Supreme Court has held that though the

Act provides for a summary procedure in completing an inquiry, the Claims Tribunal is required to dispose of all issues that arise in the Petition in one go, and it cannot decide these piece meal. The relevant paragraphs of this Judgments are quoted below:

“8. Section 169 makes a provision that the Claims Tribunal shall follow the summary procedure subject to any rules that may be made in this behalf. a The Code of Civil Procedure, 1908 is not applicable to the proceedings before the Claims Tribunal except to the extent provided in sub-section (2) of Section 169 and the Rules. The whole object of summary procedure is to ensure that the claim application is heard and decided by the Claims Tribunal expeditiously.

9. The inquiry under Section 168 and the summary procedure that the Claims Tribunal has to follow do not contemplate the controversy arising out of the claim application being decided in piecemeal. The Claims Tribunal is required to dispose of all issues one way or the other in one go while deciding the claim application. The objection raised by the Insurance Company about maintainability of the claim petition is intricately connected with its liability which in the facts and circumstances of the case is dependent on determination of the effect of the additional premium paid by the insured to cover the risk of the driver and other terms of the policy including terms of the policy contained in Para 5. Since all the issues (points for determination) are required to be considered by the Claims Tribunal together in light of the evidence that may be let in by the parties and not in piece meal, we do not think it proper to consider the rival contentions on merits at this stage. Suffice it to say that matter needs to be sent back to the Claims Tribunal.”

17. On a similar note, Delhi High Court in ***Om Prakash Jaiswal***(supra), dealing with an order passed in an application under Order 1 Rule 10 CPC, seeking deletion of a party to a Claim Petition, has held that Claim Petitions and pleas of parties seeking deletion from such proceedings, are required to be decided on scrutiny of the evidence to be led by the parties. Relevant paragraphs of this Judgment are reproduced below for easy reference:

“21. Having held the above, in the facts of the present case, the respondent no.3 has been deleted from the array of parties on a preliminary stage of the proceedings under the Claim Petition. The parties are yet to lead their evidence in the Claim Petition. It is yet to be established as to how and in what capacity was the respondent no.3 using the Offending Vehicle for ferrying its employees, if at all; whether it was a simpliciter hire of a vehicle for a particular trip or was it under an Agreement of a hire of the vehicle on a long term basis. The above factual issues could only be determined on the parties leading their respective evidence. It was, therefore, too premature for the learned Tribunal to order for the deletion of the respondent no.3 at the preliminary stage of the proceedings itself.

22. It is settled law that a plea that a claim/suit does not disclose any cause of action against a party, must be judged on a demurer. Such a plea ought to be accepted only when the Court comes to a conclusion that even if the averments in the claim/plaint are proved, the claimants/plaintiffs would not be entitled to reliefs claimed. In the present case, the petitioners in their Claim Petition had stated that the respondent no.3 had hired the Offending Vehicle for the pick-up and drop facility of its employees. It could not, therefore, be stated that the Claim Petition does not

disclose a cause of action against the respondent no.3. In addition, there was some material to show that the Offending Vehicle was being used for the purposes of the respondent no 3 at the time of the accident and on a regular basis. The actual relationship between the owner of the Offending Vehicle and the respondent no. 3 should have been left to be determined by the learned Tribunal on scrutiny of the evidence led by the parties on this issue. The claim proceedings should not have been scuttled against the respondent no. 3 at this preliminary stage itself.

23. The learned Tribunal has, therefore, erred in directing the deletion of the respondent no.3 at the preliminary stage of the claim proceedings. Only after the parties had led their respective evidence and, in case the learned Tribunal had found that there was no evidence to suggest that the Offending Vehicle had been used by the respondent no.3 under an 'Agreement of Lease', that the claim against the respondent no.3 could have been rejected.”

18. In the Claim Petition before the MACT, the Tribunal, at the relevant time, had not even completed receiving all the pleadings of the parties and Respondent No. 5, who was also an Insurance Company, which has insured the vehicle of the driver, was yet to file its written statement. The stages of framing issues and recording of evidence were far from being achieved when the impugned order was passed. The course adopted by the Tribunal is therefore totally contrary to the provisions of Sections 168 and 169 of the Act and contrary to the provisions of the Rules, as the entire scheme of the Act and Rules that apply to the procedure

required to be followed by Claims Tribunal have been given a go by. The provisions referred to above, mandate that the Tribunal complete pleadings of the parties, frame issues and record evidence of the parties and it is only thereafter, it can decide the liability of each of the Respondents to the claim, by passing an Award. As held in ***Bimlesh*** (*supra*), this cannot be done piece meal. The impugned order dated 10.08.2023 is therefore quashed and set aside for the aforementioned reasons.

19. It is a matter of record that after the impugned order was passed, Respondent No. 5 has filed his written statement on 25.09.2024, which was then amended on 06.03.2025, whilst this petition was pending; issues were framed on 15.03.2025 in the absence of Respondent No. 2, who was dropped vide the impugned order. Evidence of the Claimants is yet to commence. Consequently, the Tribunal would now have to recast the issues in view of the defence taken by Respondent No. 2 and then direct the Claimants to commence their evidence.

20. For all the reasons stated above, I pass the following order:

The Writ Petition is allowed. The impugned order dated 10.08.2023, deleting Respondent No.2 from the proceedings of Claim Petition No.88/2022 before the MACT at South Goa, Margao, is quashed and set aside.

Rule is made absolute in terms of prayer clause (i). The MACT shall, if pleadings are complete, recast the issues in view of the defence taken by Respondent No. 2 and then direct the Claimants to commence their evidence; on the Tribunal recording evidence of all parties, shall proceed to decide the Claim Petition by passing its Award on all issues

VALMIKI MENEZES, J.