



ORDER BELOW EXHIBIT 77 IN
M.A.C.P. NO. 55/2016
(SUREKHA & OTH. VS. VIKAS AND OTH.)
(PASSED ON : 11/09/2023)

Nature of the Application.

1. This is an application filed by the petitioners seeking permission to lead additional evidence.

Contents in the Application.

2. The petitioners have contended that the claim petition is in respect of seeking compensation against the opponents. A separate issue is framed in respect of negligence of the opponent No. 1 and also in respect of contributory negligence. There is eye witness of the incident. Therefore, they are intending to lead evidence of eye witness. In the interest of justice also, it is necessary to allow the petitioners to lead additional evidence.

3. On these grounds the petitioners have prayed to grant the application.

Contents in the Say of Opponent No. 1.

4. The opponent No. 1 has filed say and has denied all the material averments in the application.

5. The opponent No. 1 has contended that the reasons given in the application are not sufficient and proper. The application is devoid of merits. The application is not tenable.

6. On these grounds, the opponent No. 1 has prayed to reject the application.

No Say of the Opponent No. 2.

7. The opponent No. 2 has failed to file his say.
8. Hence, the application proceeded without say of opponent No. 2.

The Argument.

9. I have heard, advocate for the petitioners and advocate for the opponent No. 1, at length and advocate for the opponent No. 2, on law points only.
10. They argued in consonance with their contentions in the application and say.
11. In order to avoid repetition, I will deal with the arguments at the time of discussing the points taken for consideration.

Points and Findings.

12. Upon hearing, the following points arise for my consideration and I record my findings thereon as under for the reasons to follow :-

	Points	Findings
1)	Whether the petitioners prove that they were prevented by sufficient cause from leading additional evidence, as alleged ? If yes, to what effect ?	Yes. As per final order.
2)	Whether the application has the effect of delaying the hearing of the petition ? If yes, then whether the opponent Nos. 1 and 2 are entitled to costs ?	Yes. As per final order.

3)	What order ?	Application granted. By awarding costs to the opponent Nos. 1 and 2. As per final order.
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Reasons as to Point No. 1.

13. The petitioners though were aware of the evidence which they are required to lead, have failed to lead it.

14. It is well settled principle in law that too technical or pedantic approach in cases of permitting any party to lead evidence even at late stage is not called for. The Court have to adopt a justice oriented approach dictated by the upper most consideration that ordinarily a litigant ought not to be denied an opportunity of having is determined on merits unless he has, by gross negligence, deliberate inaction, or something akin to misconduct, dis-entitled himself from seeking the indulgence of the Court.

15. In my view, considering the nature of the petition it is necessary, in the interest of justice to allow the petitioners to lead additional evidence.

16. Further, if the petitioners are allowed to lead additional evidence the matter can be decided on merits and it will help to avoid multiplicity of proceeding.

17. According to the petitioners, it is necessary to lead additional evidence. In my view, considering the nature of the petition and the issues involved an opportunity is required to be given to the petitioners to lead additional evidence, which will help to arrive at

proper conclusion.

18. Above all, if the application is allowed no harm or injustice will be caused to the opponent Nos. 1 and 2 but it will help to decide the petition on merit. Therefore, keeping in mind the legal principles, supra I am inclined to give an opportunity to the petitioners to lead additional evidence in the interest of justice.

19. After giving thoughtful consideration to the facts of the case and the averments made by the petitioners in this application I am of the considered view that for just decision of this petition it is necessary to give an opportunity to the petitioners to lead evidence in order to find out the truth in the allegations made by the petitioners and the defence of the opponent Nos. 1 and 2.

20. In short, relying on the principles discussed, supra and the facts and circumstances of the case, I am inclined to grant this application and allow the petitioners to lead additional evidence.

21. Accordingly, I answer Point No. 1 in the affirmative and as per final order.

Reasons as to Point No. 2.

22. The petition is filed in the year 2016.

23. The petitioners' evidence is closed on 26/04/2019. Thereafter, the opponent Nos. 1 and 2 have not led their evidence. This showed that the petitioners have not acted diligently.

24. The record and proceeding of this claim petition shows positively that the petitioners have delayed the hearing of proceeding by not taking steps at earlier stage. In my firm opinion this conduct of the petitioners is self speaking that any how they are interested in prolonging the hearing of this claim petition and have not come with

clean hands before the court. Here, I have not considered the delay caused by the petitioners before leading evidence of their witnesses.

25. Thus, before parting with the order, at the cost of repetition, I cannot refrain myself from observing that the overall conduct of the petitioners in this claim petition and more specifically by filing this application has caused delay in the proceeding. The hearing of the claim petition is adjourned at the behest of the petitioners. Therefore, this is a fit case in which the opponent Nos. 1 and 2 are required to be reimbursed reasonably by awarding suitable costs. The state i.e. the Taluka Legal Services Committee, Pandharpur is entitled to share the cost amount as directed from time to time by the Hon'ble Supreme Court and the High Court. The cost is quantified at 1,500/- (Rs. One Thousand Five Hundred only) considering the nature of petition, delay caused and the overall conduct of the petitioners and the stage of this petition. For this view, I am buttressed by Shiv Cotex V/s. Tirgun Auto Plast Pvt. Ltd. And others, 2012 (2) Mh.L.J. 779, wherein the Hon'ble Supreme Court held thus :-

"It is sad, but true, that the litigants seek and the Court grant adjournment at the drop of the hat. It is high time that Courts become sensitive to delays in justice delivery system and realize that adjournments do dent the efficacy of the judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The Courts, particularly trial Courts, must ensure that on every date of hearing, effective progress takes place in the suit. **A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard.** (emphasis supplied) The parties to a suit – whether

the plaintiff or the defendant – must co-operate with the Court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril.”

26. Accordingly, I answer Point No. 2 in the affirmative and as per final order.

Reasons as to Point No. 3.

27. To sum, in view of what is discussed above, I, therefore, pass an order, granting this application and directing the petitioners to pay cost to the opponent Nos. 1 and 2 and the state, as per final order.

28. Accordingly, I answer point No. 3 as application granted, by awarding costs to the opponent Nos. 1 and 2 and state, as per final order.

29. In the result, I pass the following order.

ORDER

1.	The application (Exhibit 77) is granted as here-in-below :-	
a)	The petitioners are directed to pay the costs, for causing delay in the proceeding, which is quantified at Rs. 1,500/- (Rs. One Thousand Five Hundred only) to be deposited in the Court on or before 25/09/2023.	
b)	The deposit of costs shall be condition precedent for taking part by the petitioners in this claim petition.	
2.	The cost awarded shall be apportioned as herein below :-	
a)	The opponent No. 1.	Rs. 700/- (Rs. Seven Hundred only).
b)	The opponent No. 2.	Rs. 700/- (Rs. Seven Hundred only).

	c)	The Taluka Legal Services Authority, Pandharpur.	Rs. 100/- (Rs. One Hundred only).
3.	The petitioners are allowed to lead their evidence after depositing the costs, as ordered.		

(Pronounced in the open Court).

Date : 11/09/2023.

(M. B. Lambe),
Ex-Officio Member,
Motor Accident Claim Tribunal,
Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a)Name of the Stenographer : Sou. M. M. Kulkarni
- (b)Court : M. B. Lambe, District
Judge – 1 & Addl.
Sessions Judge, Pandharpur.
- (c)Order signed by P.O. on : 11/09/2023
- (d)Order uploaded on : 13/09/2023