

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

51 WRIT PETITION NO. 459 OF 2016

**BAJAJ ALLIANZ GENERAL INSURANCE CO LTD THROUGH ITS
AUTHORIZED SIGNATORY**

VERSUS

SUNITA SUNIL LODHA AND OTHERS

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**Advocate for Petitioner : Mr. Chapalgaonkar S.G
Advocate for Respondents 1 to 6: Mr.Karpe Rahul R.**

CORAM : V. K. JADHAV, J.

DATE : 15th February, 2016

PER COURT :

1. Heard finally with consent of the parties at admission stage.

2.The respondents/original claimants filed MACP No. 392/2010 before the Motor Accident Claim Tribunal, Shrirampur thereby claiming compensation of Rs.20,00,000/- from the owner, driver and insurer of the truck (Reg. No. MH 15 BJ 7183) on account of accidental death of one Sunil. The petitioner, who is insurer of the vehicle alleged to be involved in the accident contested the claim petition mainly on the ground that insured vehicle was not involved in the accident. It is specific defence raised by the petitioner insurer that the insured vehicle is planted in the accident to grab the compensation.

3. During pendency of the claim petition, initially the petitioner filed an application at Exh.51 seeking examination of Investigating Officer of the concerned criminal case to prove the contents of the police papers. The said application came to be rejected on 17.06.2015. Thereafter, the petitioner insurer filed an application Exh.61 to call Investigating officer of the criminal case arisen out of the said accident as a court witness. Learned Member, Motor Accident Claim Tribunal, Shrirampur, by the impugned order dated 25.11.2005, rejected the said application. Hence this writ petition.

4. The learned counsel for the petitioner insurer submits that in order to substantiate the defence raised by the petitioner insurer, cross examination of the witness- Investigating Officer as court witness is necessary. The learned counsel, in the alternative, submits that if the investigating officer is not called as court witness, then petitioner insurer may be permitted to examine the investigating officer as its own witness.

5. The learned counsel for the respondents/ original claimants has strongly resisted the application on the ground that the claim petition is filed in the year 2010 and the petitioner insurer is unnecessarily prolonging the

matter. The learned counsel submits that the learned Member of the Tribunal has rightly rejected the application Exh.61 and no interference is called for.

6. I do not think that the investigating officer can be called as court witness. In order to substantiate the defence raised by the petitioner insurer, the petitioner can examine the said Investigating Officer as its own witness and not as a court witness. The learned Member, Motor Accident Claim Tribunal, Shrirampur has rightly rejected the application Exh.61, however, ought to have allowed the application Exh.51. There is no reason to deny opportunity to the petitioner insurer to substantiate its defence raised before the Tribunal. In view of this, following order is passed:

O R D E R

- i. Writ petition is here by partly allowed.
- ii. The order dated 17.06.2015 below Exh. 51 in MACP No.392/2010 is hereby quashed and set aside.
- iii. Application Exh. 51 in MACP No. 392/2010 is allowed to the extent that the petitioner insurer can examine investigating officer of the criminal case arising out of the said accident as its own witness.

- iv. The learned Member, Motor Accident Claim Tribunal, Shrirampur is hereby directed to dispose of the claim petition expeditiously, preferably within three months from the date of this order.
- v. Writ petition is accordingly disposed of. No order as to costs.

(V. K. JADHAV, J.)

JPC