

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

WRIT PETITION NO.6067 OF 2016

Sumit Vinit Magar
Minor through Guardian father
Vinit Sitaram Magar Petitioner

Versus

Satish Dinkar Lokhande & Anr.Respondents

....
Mr. Tejpal Ingale for the Petitioner.
Mr. D. S. Joshi for Respondent No.2
...

CORAM : N. M. Jamdar, J.

Friday 26 AUGUST, 2016

ORAL ORDER

. The learned counsel for the Petitioner states that Respondent No.1 has refused to accept the notice and has filed affidavit of service accordingly. Respondent No.2 is served who is contesting party being the Insurance company.

2. Accordingly Rule. Rule made returnable forthwith and taken up for final disposal forthwith by consent.

3. The Petitioner has challenged the order passed by the learned Member, Motor Accident Claims Tribunal, Nasik below Exh.77 in MACP 736 of 2009. By the impugned order, the Member, Motor Accident Claims Tribunal, Nashik has rejected the

application moved by the Petitioner claiming for examination of the Doctor. The Petitioner filed Application No.736 of 2009 seeking compensation of Rs.25 lacs from the Respondents. According to the Petitioner, the Petitioner met with an accident on 15 May, 2009 and suffered serious injuries. By the judgment dated 12 November, 2014, the learned Member of the Tribunal dismissed the petition. Thereafter, the Petitioner filed a First Appeal in this Court which was disposed of on 2 March, 2016. The learned Single Judge was pleased to set aside the judgment and award of the Tribunal and remand the proceedings to the Tribunal. It was stated that the evidence of the investigating officer also be recorded. Thereafter on 16 May, 2016, the learned Member, Motor Accident Claims Tribunal, Nashik passed an order below Exh.70 wherein he stated that this Court had directed to consider the entire matter afresh.

4. Heard the learned counsel for the parties.

5. The learned counsel for the Petitioner submitted that the Petitioner is seriously injured and is paralyzed and the deposition of the Doctor is necessary for complete adjudication of the case. It was contended by the learned counsel for the Respondents that the proceedings were remanded only on the ground of negligence and the Petitioners are trying to change their case.

6. Heard learned counsel for the parties. The Claims under Motor Vehicle Act are not an akin to Civil Suit and are not hideout

by strict rigorous procedure. In the present case, the claimant wants to examine the Doctor in support of his case and there was no overwhelming reason that such request, necessary for complete adjudication of the dispute, had to be rejected.

7. As regards contention of the learned counsel for the Respondent-Insurance Company, that the matter is only restricted on the ground of negligence is concerned, in the order dated 16 May 2016, the learned Member recorded that the order of this Court was to consider the matter afresh. Even otherwise the contention of the learned counsel for the respondents is kept open that the remand is only restricted to aspect of negligence. The Respondent is therefore not prejudiced if the Doctor is examined by the Petitioner. In these circumstances, the case is made out for interference under Article 227 of the Constitution of India. The Writ Petition is accordingly allowed.

8. Rule is made absolute in terms of prayer clause (b).

9. All contentions of the parties, including the one of the learned counsel for Respondent-Insurance company regarding scope of remand, are kept open.

10. No order as to costs.

(N. M. Jamdar, J.)