

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St.NO. 11013 OF 2015**

Shri Deepak Jagdish Chadha & Ors.

..Petitioners

Vs.

Shri George Kuruvilla & Ors

..Respondents

Mr. Avinash Gokhale a/w Mr. H. G. Khambete for the Petitioners

Mr. Saumen Vidyarthi for the Respondent No.1

Mrs. Kirti Kulkarni AGP for the Respondent No.3

CORAM : R. M. SAVANT, J.

DATE : 27th JANUARY, 2017

P.C.

1 The order dated 11-2-2015 passed by the Learned Member of the MACT, Mumbai rejecting the application Exhibit 102 filed by the Petitioners for appointment of commission to examine nine doctors, is taken exception to by way of the above Petition.

2 The reasons why the said application has been rejected are mentioned in the impugned order and especially paragraph 3 thereof. The sum and substance of the said paragraph is that the trial has been unduly delayed and that if the application is allowed the examination of as many as nine doctors, would further protract the trial. The Learned Counsel appearing for the Petitioners Mr. Gokhale states that the Petitioners will prune the list of witnesses i.e. the doctors to be examined to Dr. P. P. Ashok, Neurologist attached to Hinduja Hospital and Dr. Sanjay Agrawal, Orthopedic Surgeon,

attached to Lilavati Hospital. The Learned Counsel for the Petitioner states that if the said doctors are not available for being examined in Court, they would be examined on commission.

3 It is required to be noted that the Claim Petition is of the year 1999 and is yet at the stage where the evidence is to be recorded. The person who was involved in accident i.e. the father of the Claimants has expired on 26-10-2011. The evidence of the Claimants i.e. the son and daughter, has already been recorded.

4 In my view, the interest of justice would be served if the impugned order is set aside and the following directions are issued :

(i) The Petitioner would be entitled to examine Dr. P. P. Ashok and Dr. Sanjay Agrawal. The Tribunal to issue witness summons to the said two doctors.

(ii) If the said two doctors are not in a position to remain present in the Trial. The Tribunal may permit their examination through a commission. In any event the examination of the said doctors would be completed as directed by the instant order. The costs of the commission would be borne by the Petitioners

(iii) The parties to appear before the Tribunal on 1-2-2017 and the recording of the evidence of the said doctors to be completed within the outer limit of 15-3-2017. The Tribunal is directed to hear and decide the Claim Petition latest by 30-4-2017.

5 With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]