IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11402 OF 2017

ICICI Lombard General Insurance Co.Ltd. …. Petitioners
Versus
Vinayak Ramkrishna Jadhav & Ors. ...Respondents

Mr. Rajesh Kanojia a/w Ms. Deepika Prabhala i/b. RES Juris,for the Petitioners.
Mr.Sachin Gite,for the Respondent Nos. 1 & 2.

CORAM : SMT. SADHANA S.JADHAV, J.
DATE : 16th November, 2017.

P.C. :

1. Heard.

2. The petitioner herein is the Insurance Company, which is opponent No.2 in MACP No.66 of 2013. The opponent No.1 is the owner of the vehicle involved in the accident. It appears that the Inurance Co. had filed an application seeking to examine Police Constable K.C.Jagtap of Wadner Bhairav Police Station, Taluka Chandwad and the alleged eye-witness Uttam Thombre. It is the contention of the Insurance Co. that the registration number of the vehicle involved in the accident was not mentioned in the First Information Report.

3. The learned counsel submits that the Police Constable K.C.Jagtap is the Investigating Officer, whereas opponent No.2 is the eye-witness. The said application is rejected on 13.7.2017. Hence, this Writ Petition.

4. The learned Court has observed that the Insurance Company is at liberty to examine its own witness. The learned counsel submits that it would not be possible for the Insurance Company to file an affidavit of evidence of the investigating officer or the alleged eye-witness as he would be the witness of the claimant. However, liberty of insurance company to cross-examine the eye-witness is always intact. There is no reason for calling the eye-witness in a MACP Petition by the Court. The learned counsel submits that he cannot obtain the affidavit of evidence of the eye-witness who is, in fact, the witness of the claimant. It is in these circumstances that the Insurance Company has prayed that both the persons be called as Court witnesses so as to enable the Insurance Company to cross-examine them at length.

5. It is pertinent to note that police constable K.C.Jagtap is not a scribe of the FIR. It appears that the report was given by Uttam Thombre who is proposed as a witness. That Uttam Thombre could be examined by

the Court. It was necessary to examine Uttam Thombre who happens to be the first informant in the said case. It is further submitted that the charge-sheet filed under Section 173 of Cr.P.C. is not before the Court, however a submission is made that the number of the vehicle has been interpolated subsequently.

6. The learned counsel for the respondents submits that in fact the charge-sheet is before the Court. In case it is before the Court, it would be the discretion of the learned Judge to call upon any witness to arrive at a just decision.

7. It is in these circumstances that the Petition needs to be partly allowed. The Court i.e. Member, Motor Accident Claims Tribunal, Niphad, shall issue summons to Uttam Thombre as Court witness since he happens to be the first informant in the said case. However, the prayer to examine the Investigating Officer is denied as his evidence would not be relevant for he purpose of the case. In view of this, the Petition is partly allowed in the above terms.

(SMT. SADHANA S.JADHAV,J.)