

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO.34182 OF 2016**

Bharti AXA General Insurance Company Limited

..Petitioner

Vs.

Mr. Saurabha Madhav Dhapare and others

..Respondents

Mr. N. Mehta i/b KMC Legal Venture for the Petitioner

Mr. A. M. Gokhale for the Respondent Nos.1 & 2.

CORAM : R. M. SAVANT, J.

DATE : 6th FEBRUARY, 2017

P.C.

1 The Learned Counsel for the Petitioner states that affidavit of service would be filed in the course of the present week evidencing the service effected on the Respondent No.3.

2 The order dated 10-11-2016 passed by the Learned Member of the Motor Accident Claim Tribunal (MACT), Pune, rejecting the application Exhibit 37 filed by the Petitioner is taken exception to by way of the above Petition. The said application was filed by the Petitioner-Insurance Company for being permitted to lead evidence in the Claim Petition. The said application is rejected on the ground that the application Exhibit 32 for issuing witness summons to the concerned RTO was rejected.

3 In the companion Writ Petition being No.34181 of 2016 the

identical order passed by the Learned Member of the MACT was set aside by this Court and the Petitioner-Insurance Company was permitted to lead evidence. In view thereof, the Learned Counsel appearing on behalf of the Respondent No.1 i.e. the Claimant, submits to the orders of the Court. He however states that in the event the Petitioner – Insurance Company is allowed to lead evidence then the same may be directed to be done within a particular time frame and the contentions of the Respondent Nos.1 and 2 in respect of the evidence that would be led be kept open. In view of the said statement made by the Learned Counsel appearing for the Respondent No.1, the impugned order dated 10-11-2016 would stand set aside and the following directions are issued :

- (i) The Petitioner Insurance Company would be entitled to lead evidence of the official from the concerned RTO as also leading evidence of its own officer.
- (ii) In so far as the witness from RTO concern is concerned, the said person to be kept present in court on 2-3-2017 when the evidence in the companion claim Petition is being recorded.
- (iii) The parties to appear before the concern MACT on 8-2-2017 when the Claim Petition is to come up before the Tribunal.
- (iv) The Petitioner may make an application for issuing of witness summons to the official of the concerned RTO. However, his examination would be on 2-3-2017. This direction is issued to see to it that the Claim Petition is decided

expeditiously.

(v) Save and except the aforesaid two witnesses, the Learned Counsel for the Petitioner states that no other witnesses would be examined.

(vi) The Tribunal after recording of the evidence is complete, may dispose of the Claim Petition expeditiously and not later than 30-4-2017.

4 The permission to lead evidence granted to the Petitioner Insurance Company is without prejudice to the rights and contentions of the Respondent Nos.1 and 2 as regards the efficacy of the evidence in the absence of pleadings.

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

6 Parties to act on a copy of this order duly authenticated by the Court Shirestedar.

[R.M.SAVANT, J]