

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

WRIT PETITION NO.4936 OF 2016

Bharti Axa General Insurance Company Ltd.	..Petitioner
Versus	
The State of Maharashtra and others	..Respondents

Mr. N. Mehta i/by KMC Legal Venture for the Petitioner.
Mrs. M. S. Bane, "B" Panel Counsel for the Respondent No.1.
Mr. T. J. Mendon for the Respondent Nos.2 to 5.

CORAM : R. M. SAVANT, J.
DATE : 14th FEBRUARY, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 04.11.2015 passed by the Learned Adhoc District Judge-1, Raigad, District Alibag, by which order, the application Exh.23 filed by the Petitioner - Insurance Company to direct the claimants to implead the driver of the vehicle involved in the accident as a party Respondent to the claim Petition came to be rejected. The said rejection is on the ground that in the contract of insurance the liability of the driver of the vehicle and the insurance company is always joint and several. The Learned Judge therefore did not deem it appropriate to direct the claimants to implead the driver of the vehicle as party Respondent.

2 On behalf of the Petitioner Mr. N. Mehta sought to draw this

Court's attention to the written statement filed on behalf of the Petitioner company. In the written statement, the Petitioner Insurance Company has questioned the maintainability of the dispute on the ground of non-joinder of necessary parties i.e. the driver. However by the instant application Exh.23 a contra position is sought to be taken by the Insurance Company by seeking the impleadment of the driver.

3 In my view, the same cannot be permitted. The Trial Court was right in rejecting the application on the ground of joint and several liability of the Insurance Company alongwith the driver. The Trial Court has also dealt with the judgments which were relied upon on behalf of the Insurance Company before it in support of the said application and has impliedly held that the said judgments would not be applicable. The Learned Counsel appearing on behalf of the Petitioner would further contend that the evidence of the driver is material to prove that the vehicle in question was being driven for higher and reward. If that be so, the Petitioner would be entitled to examine the said driver as his witness since presently the driver is now residing in Mumbai. The Petitioner can produce the said driver as its witness during the course of its evidence being recorded in the said claim Petition. Needless to state that if any application is filed by the Petitioner before the Trial Court, the Trial Court is directed to permit the Petitioner to examine the said driver as its

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witness. However the evidence of the said driver to be completed expeditiously and the claim Petition not to be delayed on the said ground. If the claim Petition is at the stage of final arguments, the evidence of the driver to be completed within two weeks of the date on which the Petition is to come up before the Trial Court. No further adjournment should be granted by the Trial Court. With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]