

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2003 OF 2018

Mangaltai w/o Baburao Kedar
Age - 47 years, Occ - Household
R/o Warni, Taluka - Shirur
District - Beed

PETITIONER

VERSUS

1. Suryabhan s/o Tabaji Aghav
Age - 60 years, Occ - Nil
R/o Dahiwandi, Taluka - Shirur
District - Beed

RESPONDENTS

2. Raju s/o Daulat Pawar
Age - Major, Occ - Driver
R/o Warni, Taluka - Shirur (Kasar)
District - Beed

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Mr. Nilkanth P. Bangar, Advocate for the petitioner
Mr. R. B. Dhakne, Advocate for respondent No.1

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 20th JULY, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally by consent.
2. Petitioner is owner of vehicle which had met with accident and from the same claim petition pending before Motor Accident Claims Tribunal, Beed has arisen. While the claim petition came to be filed, since neither record with respect to insurance of the vehicle could be secured from the police station nor could be

procured from the petitioner, the claimant found it to be an handicap in arraying insurance company as party to the original claim petition.

3. On appearance in response to the claim petition, petitioner - owner of the vehicle had resisted the claim, *inter alia*, on the ground that the claim petition suffers non joinder of necessary parties. The claim petition had been dismissed for non prosecution in December, 2010, however, had been subsequently restored in January, 2017 and an application came to be moved on behalf of the owner to add insurance company as party respondent to the claim petition. The court had declined to accede to the request having regard to that the petitioner herself had requested for dismissal of the claim petition on the ground of non joinder of necessary parties and further for that she has not been able to produce record substantiating case about vehicle being insured, particularly, as no insurance policy had been produced.

4. Learned advocate for the petitioner submits that several attempts had been made to secure insurance policy from concerned police station or for that matter from insurance company, however, the same has not borne fruits.

5. These circumstances, particularly are not disputed from the

other side. Learned advocate for the respondent - claimant submits that the request if granted would further lengthen the prosecution of claim petition and claimant is suffering.

6. Learned advocate for the petitioner refers to provisions of section 147, particularly sub section (5) of the Motor Vehicles Act, 1988, whereunder insurance company is obligated to indemnify policy holder and petitioner indeed is a policy holder. He further refers to section 149 and sub sections (2) and (7) thereof and considers that pursuant to said provisions of the Motor Vehicles Act, it is imperative to have insurance company as a party to the proceedings.

7. In any case, upon appearance of insurance company, the position would be clarified and purpose underlying the claim petition may be augmented. In view of the same, it appears to be expedient to allow the writ petition.

8. Writ petition, therefore, is allowed. Rule is made absolute in terms of prayer clause "B". This order, of course, shall not prejudice claims and case of the party to be added in any way and all points are open for said party to be canvassed.

Dinesh
Ramrao
Pawar

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signed by
Dinesh
Ramrao Pawar
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[SUNIL P. DESHMUKH, J.]

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