

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2536 OF 2018

HDFC Ergo General Insurance Co. Ltd., Andheri (West), Mumbai.	... Petitioner
V/s.	
Sujata Vijendra Shrupali & Ors.	... Respondents

Mr. Abhijit P. Kulkarni for the Petitioner.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 19TH APRIL, 2018.

P.C. :

1. Heard Mr. Kulkarni, learned counsel for the Petitioner.
2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 15th November 2017, passed by the Member, Motor Accident Claims Tribunal, Pune, below the application at “Exhibit-45” filed in M.A.C.P. No.292 of 2010.
3. The application at “Exhibit-45” was filed by the Respondents-the Original Claimants for recall of Witness No.1-Deepak Ramchandra Phadnavis and Witness No.2-Ashok Chandrakant Chavan, for further cross-examination. The application was strongly resisted by the Petitioner herein – the Insurance Company, on the count that, it is as good as allowing the Respondents-Claimants to fill up the lacunae in the

evidence. The Trial Court has, however, allowed the said application, subject to costs of Rs.2,000/-; hence, the instant Writ Petition.

4. Learned counsel for the Petitioner has placed reliance on the Judgment of the Hon'ble Apex Court in the case of *Bagai Construction, [through its proprietor Lalit Bagai] Vs. Gupta Building Material Store, (2013) 14 SCC 1*, to submit that, power conferred upon the Court under Order 18 Rule 17 CPC, cannot be used routinely; merely for the asking. If it is so used, it would defeat the purpose of various amendments made in the Civil Procedure Code, 1908, to expedite the trial. It is urged that, such power is to be used in the exceptional cases and mainly when the Court feels it necessary that the witness needs to be recalled. Here in the case, it is urged that, the Respondents-Claimants have sufficiently cross-examined both these witnesses and the only issue pertained to the legality and validity of the Insurance Policy. On that aspect, as already there is cross-examination, the recall of these witnesses to fill up the lacunae should not have been permitted by the Trial Court.

5. However, as rightly observed by the Trial Court, this is a case, which pertains to a Claim Petition filed under the Motor Vehicles Act, which is a socially beneficial legislation and it is beneficial for the Claimants. So the discretion, which the Court has to exercise, should be in favour of the Claimants and it should be on a liberal approach. It may be true that, the powers under Order 18 Rule 17 of CPC are not to be

exercised routinely, but then, as the entire issue in the instant case revolves around the legality and validity of the Insurance Policy, in order to assist the Court to arrive at its proper finding also, further cross-examination of these two witnesses of the Respondents may be necessary; so that, the Trial Court can decide the issue properly, completely and effectually. The further evidence of these witnesses, instead of closing it, will advance the cause of justice, if permitted, and, therefore, the discretion exercised by the Trial Court in recalling these two witnesses, that too subject to costs of Rs.2,000/- and only for the limited purpose of cross-examination, does not call for any interference.

6. Writ Petition, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]