

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3671 OF 2017

Ifco Tokio General Insurance Co. Ltd. ... Petitioner
Vs.
Jawahir Shitlu Kandu & Anr. ... Respondents

Mr. Abhijit Kulkarni, Advocate for the petitioner.
Mr. T.J. Mendon, Advocate for respondent no. 1.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 31st July, 2018.

P.C.:

This Writ Petition is directed against the order dated 7th March, 2017 below Exhibit 35 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai in MACP Application No. 2273 of 2009. The petitioner/insurance company has filed this Application praying for review of order dated 27th February, 2017 passed below Exhibit 34 by which their request for reopening the case and allowing to lead evidence was rejected.

2. The learned counsel for the petitioner has submitted that the petitioner could not move the Application well within the time because the counsel from whom he has received this brief was seriously sick and hospitalized, so the counsel for the petitioner was attending him in the hospital and was not able to attend the matter. He prays that a

lenient view is to be taken in the interest of justice. The advocate of the insurer has cross-examined the witnesses of the claimant and has prayed that the insurer be allowed to lead his evidence.

3. I am informed by the learned counsel for the respondent no.1/claimant that now the arguments are over, however, the matter is stayed. He submitted that the insurer no. 2/Reliance Insurance Ltd. has examined the witness but insurer no. 1/petitioner has failed to lead evidence. The arguments are over, so the matter is stayed and it is not pronounced.

4. In view of the submissions of the learned counsel for both the sides and the facts therein, I allow this Writ Petition with following order:

- (i) The order dated 27th February, 2017 below Exhibit 34 and order dated 7th March, 2017 below Exhibit 35 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai in M.A.C.P. No. 2273 of 2009 are hereby set aside;
- (ii) The petitioner/insurer no.1 is allowed to lead evidence and examine the witnesses, which may be one or two,

subject to payment of cost of Rs.3,000/- payable to the original plaintiffs;

- (iii) The parties to appear before the Tribunal on 7th August, 2018 at 11 a.m.
- (iv) The petitioner shall give the list of the witnesses and the copy of the same is to be served on the counsel for the claimant;
- (v) The Tribunal is directed to complete the recording of the evidence and further submissions and pronounce the judgment on or before 15th September, 2018.

(MRIDULA BHATKAR, J.)

Vidya
Suresh
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by Vidya Suresh
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