

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6388 OF 2018

**ICICI LOMBARD GENERAL INSURANCE COMPANY LIMITED
VERSUS
MUMTAZ BEE ANWAR SHAHAND OTHERS**

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Advocate for the Petitioner : Shri A. G. Choudhari
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 15th APRIL, 2019.

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PER COURT :

1. All the respondents have been served in September 2018. An appearance has been entered on behalf of respondent Nos. 1 to 4. None present today. Respondent Nos. 5 and 6 have not entered any appearance.
2. Leave to correct the surname of Respondent No.6.
3. I have heard the learned Advocate for the petitioner Insurance Company. With his assistance, I have gone through the petition paper book.
4. It is well settled law that a litigant should be permitted

to place his best evidence before the Court in any proceedings so as to be able to canvass his averments.

5. The petitioner has specifically stated in paragraph No. 15 of its written statement filed in MACP No. 676/2016 that the accident had taken place on 16/08/2016 and the crime was registered on 20/09/2016 after 26 days (infact it is 35 days) from the date of the accident. It is specifically averred that though the motorcycle bearing No. MH-28-AP-4025 is shown to be involved the accident, it is not the actual vehicle which had suffered in accident. It is specifically pleaded that a false implication of the vehicle insured with the petitioner company cannot be ruled out. It was then alleged that, with the connivance of the police machinery, the claimants have involved the said motor cycle merely because it has an insurance cover from the petitioner company. The reason for such suspicion is that the owner of the said vehicle is respondent No. 6 Prashant Ramkisan Shingne, who has not appeared before the Motor Accidents Claims Tribunal.

6. I have perused the application filed by the Insurance

Company dated 21/12/2017 before the Tribunal. Issue is that, if the petitioner is of the view that it could establish its averments by examining the police constable concerned, whether the petitioner could be prohibited from examining the said constable.

7. I find from the impugned order that though the Tribunal has narrated, briefly, the events in paragraph Nos. 1 to 3, it has concluded in paragraph No. 4 that as the police case papers are available, no police witness is required to be examined.

8. I find that the Trial Court should have considered the averments of the Insurance Company and should have noted that a father and son duo were riding a vehicle in which the father was a pillion rider and his son is said to have driven the vehicle in a rash and negligent manner. It, therefore, needs to be investigated as to how could the vehicle belonging to Prashant Ramkisan Shingne reach the hands of the son of the deceased and whether the contention of the Insurance Company is true.

9. In view of the above, this petition is allowed. The impugned order dated 15/01/2018 is quashed and set aside and the application dated 21/12/2017 Exhibit 32, stands allowed. The Tribunal shall pass an appropriate order for issuing witness summons to the concerned constable in view of the remarks set out in Exhibit 32.

(RAVINDRA V. GHUGE, J.)

shp/-