

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

WRIT PETITION NO.6968 OF 2018

IFFCO Tokyo General Insurance Co. Ltd. .. Petitioner

V/s.

Sarita Kishin Aswani & Ors. .. Respondents

Mr.A.P. Kulkarni for the petitioner

Mr.S.S.Vidyarthi for the respondent no.1

CORAM: K.K. TATED, J
DATED : JANUARY 15, 2019

P.C. :

1 Heard the learned counsel for the parties.

2 By this Writ Petition, under Article 227 of the Constitution of India, petitioner original opponent no.2 Insurance Company challenges the order dated 15.06.2018 passed by Member, MACT, Mumbai below Exhibit 377 in MACP No.215 of 2011 rejecting petitioner's application for issuance of witness summons.

3 In the present proceeding, respondent original claimant filed Claim Petition No.215 of 2011 before MACT for compensation under section 166 of the Motor Vehicle Act. In that proceeding, at the time of trial, advocate for insurance company filed application below Exhibit 377 on 15.06.2018 requesting Tribunal

to issue witness summons to the Bank of Baroda to produce the following documents:

- 1) Medical Reimbursement Bills if any by Bank.
- 2) Personal accidents benefit reimbursement to employee if any to said employee.
- 3) Regular Pension Records.
- 4) Any other special benefits under any reliance paid to employee due to sudden accident injury.
- 5) Medical leave salary record.

4 The said application was rejected by the Tribunal by impugned order dated 15.06.2018 on the ground that indirectly petitioner wants to recall the earlier witness. Hence, the present Writ Petition.

5 The learned counsel for the petitioner submits that Tribunal erred in coming to the conclusion that by their application below Exhibit 377 they want to recall the earlier witness. He submits that in claim petition, they wanted some documents from Bank of Baroda where claimant was working and hence, they filed application for witness summons to produce certain documents on record. He submits that there is no question for recalling the witness in the present proceeding. Hence, impugned order passed by Tribunal is required to be set aside and allow petitioner's application below Exhibit 377. He submits that if present petition is not allowed, irreparable loss

will be caused to the petitioner. He submits that those are the important documents for petitioner to defend their case before this Tribunal.

6 On the other hand, the learned counsel for the Respondent original claimant vehemently opposed the present Writ Petition. He submits that Trial Court rightly rejected Petitioner's Application below Exhibit-377. He submits that indirectly, Petitioner wants to recall earlier witness of bank i.e. Supriya Dabhade who is working as a Senior Manager in Human Resource Management. He submits that when the witness no.12 entered into the witness box, Petitioner cross examined her, but that time they have not asked any question about the documents below Exhibit-377. Trial Court rightly held that the said witness cannot be recalled. He submits that once opportunity is given for cross-examination then there is no question of recalling the witness again. In support of this contention he relies on following judgments:

1. Balkrishna Shivappa Shetty vs. Mahesh Nenshi Bhakta and others, 2003(3) Mh.L.J. 47
2. Gayathri vs. M. Girish, (2016) 14 SCC 142
3. Ram Rati vs. Mange Ram (Dead) Through legal representatives and others, (2016) 11 SCC 296
4. Vadiraj Naggappa Vernekar (Dead) Through

Lrs. vs. Sharadchandra Prabhakar Gogate, (2009) 4
SCC 410

5. K.K.Velusamy vs. N. Palanisamy (2011) 11 SCC
275

6. Ashok Lalita Pandey and another vs. Zarina
Abdullah Janai and others 2018(3) Mh.L.J. 871

7 The learned counsel for the Respondent submits that in all these authorities, court decided the case under Order XVIII Rule 17 of the Code of Civil Procedure, 1908 and held that there is no question of recalling the witness without any cogent evidence on record.

8 The learned counsel for the Respondent also relied on following authorities:

1. Shiv Cotex v. Tirgun Autoplast P. Ltd. And
Others, (2011) 9 SCC 678

2. Noor Mohd. V. Jethanand and Another, (2013) 5
SCC 202

9 The learned counsel for the Respondent submits that in both the authorities court held that court should not grant unnecessary adjournment. On the basis of these submissions, the learned counsel for the Respondent submits that there is no

question of allowing the present Writ Petition and same is required to be dismissed with costs.

10 Heard.

11 Bare reading of the Application below Exhibit-377 in MACP No.215 of 2011 shows that Petitioner wants to call the witness from the Bank of Baroda to produce those five documents only. No where it is stated in the Application, that court should recall the witness no.12 Supriya Dabhade from Bank of Baroda. Therefore, prima facie, observation made by the Trial Court in its order dated 15.06.2018 is incorrect. The authorities cited by the Respondent on the point of Order XVIII Rule 17 of Code of Civil Procedure, 1908 are in respect of recalling the witness, whereas in the case in hand, question is whether court can issue witness summons, to produce certain documents. Therefore, all these authorities are not applicable in the facts and circumstances of the present case. Two authorities are cited by the Respondent on the point of adjournment. It is to be noted that Respondent already examined nearabout 13 witnesses whereas Petitioner filed Application immediately for issuing witness summons to produce certain documents.

12 Considering the facts and circumstances of the present case in hand, the authorities cited by the Respondent on the point of adjournment are also not applicable.

13 Considering the submission made by the learned counsel

for the Petitioner and Application below Exhibit-377 in MACP No. 215 of 2011, I am of the opinion that Petitioner has made out a case for allowing the said Application, but at the same time, they have to pay cost of Rs.5,000/-. Hence, following order is passed:

- a) Order dated 15.06.2018 passed by Member, MACP below Exhibit-377 in MACP No.215 of 2011 is set aside.
- b) Application filed by Petitioner below Exhibit-377 in MACP No.215 of 2011 pending before MACT at Mumbai for issuing witness summons is allowed.
- c) Tribunal is directed to issue appropriate witness summons as per Application below Exhibit-377 filed by the Petitioner.
- d) Petitioner to pay cost of Rs.5,000/- to the Respondent original claimant on or before 20.02.2019.

(K.K. TATED, J.)