

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

WRIT PETITION NO.5977 OF 2019

Vaibhav Subhash Pawar

..Petitioner

Versus

Hule Construction Pvt. Ltd. and Ors.

..Respondents

Mr. Tejpal S. Ingale, for the Petitioner.

None for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 24th JANUARY, 2022

PC.

1. Though served none appears for the respondents.
2. In view of motion made by counsel for the petitioner Mr. Tejpal Ingale, deletion of respondent No.3 is permitted at his risk and peril. Amendment be carried out in one week.
3. This petition is by the claimant who is agitating his claim for award of compensation under Section 166 of the Motor Vehicles Act, 1988 ("MV Act" for short).
4. At the stage of the claim/petition, petitioner claims to have moved application Exh.69 praying therein recall of expert witness; a doctor who was examined at Exh.56 on 6th February, 2018.

5. The prayer is rejected on the ground that the proceedings are at advanced stage and there is no justifiable claim for recalling of said witness.

6. Mr. Tejpal Ingale, while drawing support from the judgment of the Apex Court in the matter of ***K. K. Velusamy Vs. N. Palanisamy*** reported in ***(2011) 11 SCC 275*** would urge that considering very object of the provisions of Section 166 of the MV Act r/w provisions of Order XXVIII Rule 17 of CPC, the Court should have granted prayer for recalling of the witness as no prejudice is likely to be suffered by the otherside. According to him, petitioner intends to bring on record certain clarifications in the matter in evidence of the said witness.

7. Considered submissions.

8. Apart from the fact that the contentions are not controverted, fact remains that the petitioner is claimant who is seeking compensation on the ground of permanent disability suffered by him. So as to establish his degree of disability, the permanent disability certificate came to be issued which is at Exh.57. It appears that the doctor who is examined at Exh.56 needs to clarify certain issues in the evidence.

9. Considering the very object of the statute and the law laid down by the Apex Court in the aforesaid judgment and the fact

that the contentions are not countered by any of the respondents, the order impugned dated 16th January, 2019 passed below Exh.69 in MACP No.157 of 2016 is hereby quashed and set aside. The said application Exh.69 stands allowed subject to payment of cost of Rs.3000/- to be deposited before the Court below within a period of four weeks from today to which the respondent No.2/Insurance Company will be entitled.

10. The statement made by the counsel for the petitioner that the witness shall be examined expeditiously and without any unnecessary adjournment is accepted as an undertaking to this Court.

11. As such, petition stands allowed in the aforesaid terms.

[NITIN W. SAMBRE, J.]