



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12136 OF 2024

Cholamandalam Ms Ins Com Ltd Through Its Manager
VERSUS
Rajashri Raghunath Kadam And Others

Mr. A. G. Choudhari, Advocate for the petitioner

CORAM : R. M. JOSHI, J.

DATE : 12th NOVEMBER, 2024

PER COURT :-

1. This petition takes exception to the orders below Exhibit 98 dated 7th February, 2024 and Exhibit 101 dated 6th March, 2024 passed in M.A.C.P. N. 30/2021.

2. The petitioner is Insurance Company. The petitioner filed written statement resisting the claim. It is the contention of the petitioner that the claimant had sought issuance of summons to the Investigating Officer and an order came to be passed to that effect below Exhibit 70 on 16th December, 2022. However, the claimant did not pursue the said order and ultimately Investigating Officer was not examined. In this backdrop application Exhibit 98 came to be filed by the petitioner to call the Investigating Officer as a Court witness. This application came to be rejected by order dated 7th February, 2024. The petitioner has also filed an application vide Exhibit 102 seeking direction to respondent no.1 owner of the vehicle to produce driving license of the person who was

said to have been driving the vehicle at the relevant time. This application in fact is allowed. However, application vide Exhibit 101 moved for issuance of witness summons to the R.T.O, Hingoli to call Deputy R.T.O along with the driving license of the driver, namely, Siddharth Kailash Dhembre, came to be rejected by the Tribunal with observation that it is not stated in the application that the said person was holding driving license.

3. Learned counsel for the petitioner submits that the issuance of summons to the Investigating Officer at the behest of the original claimant indicates that the examination of the said witness is relevant for the decision of the case. Thus, it is his submission that for the purpose of cross examination of the Investigating Officer which is witness need to be brought before the Court and hence, the application was filed to calling as a witness Court witness. In so far as Exhibit 101 is concerned, it is his contention that since a specific stand is taken in the written statement that the driver of the vehicle was not holding a valid and effective license, steps are required to be taken by the insurer to prove the said contention. It is his submission that examination of Deputy RTO would show that the person who was driving the vehicle at the relevant time was not holding a valid license.

4. It would have been a different issue if the petitioner insurer sought to examine Investigating Officer as Court witness and in that

case the Tribunal would not have been justified in rejecting such prayer. However, if the witness is to be called as Court witness, the Court concerned must be satisfied that the examination of the such person find is necessary by the Court. Perusal of the order impugned shows that the learned Tribunal has taken into consideration the said fact and observed that it is not necessary to call Investigating Officer as Court witness. Thus, the Tribunal has exercised its discretion judiciously and this Court finds no perversity in the said order.

5. In so far as the rejection of application vide Exhibit 101 is concerned, there is no case sought to be made out before the Tribunal that the driving license placed before the Court is not genuine. In that circumstance, the insurer may be justified in calling R.T.O. to prove that the license on placed on record is not valid. However, it does not stand to any reason that RTO of a particular place, is called to prove that the person is not holding valid license.

6. Having regard to the afore stated facts, for want of perversity, no interference is caused in the impugned orders. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp