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**(2016) 05 RAJ CK 0065**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 9806 of 2014

Smt. Manju & Ors.

APPELLANT

Vs

Suresh Kumar & Ors.

RESPONDENT

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**Date of Decision :** 30-05-2016

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17  
Constitution of India, 1950 — Article 227

**Citation :** (2016) 3 DNJ 1019 : (2016) 3 WLN 469

**Hon'ble Judges :** Mr. Arun Bhansali, J.

**Bench :** Single Bench

**Advocate :** Mr. Suresh Kumbhat, Mr. B.K. Bhatnagar, Advocates, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

Mr. Arun Bhansali, J.—This writ petition has been filed by the petitioners aggrieved against order dated 19.09.2014 passed by the Motor Accident Claims Tribunal, Abu Road, whereby, the Tribunal has allowed the application filed by the respondent ? Insurance Company under Order 18, Rule 17 C.P.C. and has directed for recall of witness Bharat Kumar.

2. The application seeking compensation was filed by the petitioners against Suresh Kumar, Lalji Bhai and Bajaj Allianz General Insurance Company.

3. During the course of the evidence led by the petitioners, one Bharat Bhai/ Bharat Kumar was examined as PW-1, who indicated that Driver?Suresh Kumar was driving the vehicle rashly and negligently. Thereafter the present application was filed by the Insurance Company along with statement of said Bharat Bhai, which was deposed by him in the criminal proceedings initiated against Suresh Kumar?Driver, wherein, he had made certain averments regarding the mistake of the Driver and it was claimed by the Insurance Company that there are material contradictions in the statement of said Bharat Bhai/Bharat Kumar and, therefore, the witness be recalled.

4. The application was opposed by the petitioners by filing reply. It was submitted that the contents of two statements cannot be said to be having material contradictions so as to recall the witness. It was further submitted that the application has been filed by the Insurance Company only to delay the proceedings and, therefore, the application deserves to be dismissed.

5. The Tribunal after hearing the parties, came to the conclusion that there were prima facie contradictions in the statement of Bharat Bhai/Bharat Kumar and based on its finding ordered recall of the said witness.

6. It is submitted by learned counsel for the petitioners with reference to the two statements that it cannot be said that there is material contradiction to the extent that the witness is to be recalled and that power under provisions of Order 18, Rule 17 C.P.C. has to be exercised sparingly; the Tribunal without properly examining the statements made by the witness has passed the order impugned, which deserves to be quashed and set aside.

7. I have heard learned counsel for the petitioners and have perused the material available on record.

8. From a bare look at the statements produced by the petitioners, recorded before the Tribunal and before the criminal court, without expressing any opinion on the aspect of contradiction, in the view of this Court once the Tribunal based on the material before it had come to the conclusion that the witness is to be recalled, which order in the present circumstances cannot be said to be against record, no interference is called for while exercising jurisdiction under Article 227 of the Constitution of India.

9. In view of the above, no case is made out for interference. The writ petition has no substance and the same is, therefore, dismissed.