

+ CM(M) No.1245/2009

Date of Decision: 3rd December, 2009

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M/S SPECTRA PUNJ LLOYD Petitioner
Through : Mr. Kailash Sharma, Adv.

versus

RAKESH RANJAN & ORS Respondents
Through : Ms. Rashmi Priya, Adv.
for R-1.
Mr. Amit Kumar Pandey,
Adv. for National Insurance
Co. Ltd.

CORAM :-**THE HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | NO |
| 2. | To be referred to the Reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

JUDGMENT (Oral)**CM (M) No.1245/2009 and CM No.15520/2009**

1. The petitioner has challenged the order dated 8th September, 2009 passed by the learned Tribunal whereby petitioner's application under Order 1 Rule 10 of the Code of Civil Procedure for impleading National Insurance Company Limited as a respondent has been rejected.
2. The accident dated 29th December, 2000 resulted in the injuries to Rakesh Ranjan. The claimant was travelling on his scooter bearing No.DL-3S-R 7764 when he was hit by a

Tata 407 No.HR-38 C 1773 and Mahindra jeep No.HR-06 G 3251. The claimant filed the claim petition against the drivers of both the vehicles. The owner of Mahindra jeep and Insurance Company of Tata 407 were also impleaded as respondents in the claim petition. The petitioner is the owner of Mahindra jeep who filed the application before the learned Tribunal to implead National Insurance Company Limited as one of the respondent so that if any liability of the petitioner is ultimately held, it shall be borne by National Insurance Company Limited.

3. The learned Tribunal has dismissed the application on the ground that in the case of composite negligence, one of the tort-feasors can be directed to pay the money and to recover the share of composite negligence from the other tort-feasors.

4. The finding of the learned Tribunal relates to the recovery of the award amount from one of the two tort-feasors. However, relevant consideration for impleading respondent is that whether the respondent proposed to be added is necessary for determining the real issues between the parties. The presence of National Insurance Company Limited who is the insurer of Mahindra jeep is necessary for determining the real issues between the parties but the learned Tribunal has not considered this aspect at all.

5. In the facts and circumstances of this case, the petition is allowed and the impugned order is set aside.

6. The application of the petitioner under Order 1 Rule 10 of the Code of Civil Procedure is allowed and the National Insurance Company Limited is impleaded as one of the respondents in the claim petition.

7. Mr. Amit Kumar Pandey, Advocate accepts notice on behalf of National Insurance Company Limited.

8. The learned counsel for the petitioner submits that the case is listed before the learned Tribunal on 4th December, 2009. Mr. Amit Kumar Pandey, Advocate for National Insurance Company Limited shall appear before the learned Tribunal on 4th December, 2009.

9. The petitioner shall file the amended memo of parties before the learned Tribunal and shall also furnish the complete set of claim petition along with the copy of the insurance policy to learned counsel for National Insurance Company Limited.

10. CM No.15520/2009 also stands disposed of.

11. Copy of this order be given 'Dasti' to learned counsel for the parties under signature of Court Master.

DECEMBER 03, 2009
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J.R. MIDHA, J