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C.R.P. (PD) . (MD) .No.1934 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 30.06.2023	Pronounced on: 14.07.2023
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CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(PD).(MD).No.1934 of 2022
and
C.M.P.(MD).No.8798 of 2022

M/s. United India Insurance Company Limited,
Through it's Manager,
No.63-C, Palayamkottai Road,
Behind Government Hospital,
Tiruchendur – 628 215.

.. Petitioner

Vs.

1.Saradha Devi

2.Ahalya

3.Deeptha

4.Jai V.Vairav

5.Vimalan

6.P.Parimalarajan

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 19.04.2022 passed in I.A.No.03 of 2021 in MCOP.No.1990 of 2018 on the file of the IV Additional District Court, Tirunelveli.



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For Petitioner : Mr.I.Suthakaran
For RR 1 to 4 : Mr.T.Selvakumaran
For RR 5 & 6 : No appearance

ORDER

The petitioner is aggrieved by the Impugned Order dated 19.04.2022 passed by the IV Additional District Judge Court, Thirunelveli in I.A No. 3 of 2021. IA.No.3 of 2021 was filed by the petitioner under Order I Rule 10 of CPC to implead the 6th respondent herein as 3rd respondent in MCOP.No.1990 of 2018.

2. The relevant portion of the impugned order reads as under:

“14.As already discussed, the present petition has been filed to implead the driver/ owner of the auto said to have been involved in the accident in which the Thayalan had died. The deceased was riding as a pillion rider of the motorcycle belonging to R5/R1 Vimalan. The petitioner/R2 raises a contention that Tiruchendur police have filed a case in Cr.No. 140/2018 as against the driver of the auto only. When the driver of the auto is not before this court, the petitioner/R2 would contend that the claim cannot be decided properly.



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15. When considering the dictum laid by our Apex Court and which has been followed by our High Court, the claimants that is R1 to R4 are third parties as far as this claim is concerned. They are at the risk of losing the claim if they are not able to establish that there was negligence on the part of the driver of the motorcycle namely R5/R1 Vimalan. If there is no negligence on the part of the motorcycle driver then the insurance company that is the present petitioner will not be liable to pay compensation. Therefore, this application seeking to implead the driver/owner of the auto is not necessary and this petition stands dismissed. There is no order as to cost."

3. By the impugned order, the Claims Tribunal has dismissed the application filed by the petitioner, by placing reliance on the decision of the Hon'ble Supreme Court in **Khenyei Vs. New India Assurance Company Limited**, [2015 (9) SCC 273] and the decision of this High Court in **K.Kannaki and others Vs. A.Jalaludeen and others**, [CDJ 2021 MHC 2689] and two other decisions of the Division Bench of this Court in **United India Insurance Company Limited Vs. D.Hemavathy and others**, [2017 (2) TNMAC 150] and **Tata AIG General Insurance Company Limited Vs. Kaveri and others**, [CDJ 2020 MHC 4438].



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4.The petitioner herein/second respondent in M.C.O.P.No.1990 of 2018 who had filed I.A.No.3 of 2021 under Order I Rule 10 read with Section 151 of C.P.C. to implead 6th Respondent, the owner of the share auto bearing Registration No.TN 69-AR-4379 on the ground that the owner of the two wheeler namely, Vimalan, the 5th Respondent who was riding the motorcycle, in which, the first respondent's husband late Thayalan was travelling as a pillion rider who died on account of the collision between the two had himself filed a criminal complaint against the 6th respondent, the owner of the Share auto and that case had been registered in Crime No.140 of 2018 on 08.06.2018 before Thiruchendur Jurisdictional Police Station.

5.It is submitted that the F.I.R. in Crime No.140 of 2018 indicate itself that, the mistake was on the part of the 6th respondent, the driver of the share auto bearing Registration No. TN-69-AR-4379, which has resulted in the accident and fatal death of the pillion rider, Thayalan.

6.The learned counsel for the petitioner submits that the impugned order of the Tribunal is not sustainable. It is submitted that the 5th respondent himself has had filed FIR in Crime No.140 of 2018, wherein



in the complaint filed by the 5th respondent before the Tiruchendur Police Station, the 5th respondent has stated that the 6th respondent had hit the motorcycle bearing Registration No.TN 69 AR 0749 in which the deceased was traveling as a pillion rider.

7.It is therefore, submitted that the 6th respondent – owner of the share auto bearing Registration No.TN 69 AR 4379 ought to have been impleaded by the claimants (respondents 1 to 4) and since they failed to implead the 6th respondent, the petitioner was constrained to file IA.No.3 of 2021, which has been erroneously rejected by the Claims Tribunal. It is submitted that the Claims Tribunal has misinterpreted the decision of the Hon'ble Supreme Court in **Khenyei Vs. New India Assurance Company Limited**, [2015 (9) SCC 273] and other decisions.

8.Per contra, the learned counsel for the respondents 1 to 4 / claimants submitted that the impugned order is well reasoned and does not require any interference from this Court under Article 227 of the Constitution of India.



9. In the case for composite negligence, when apportionment of compensation is to be made between two tortfeasors, the claimant can recover at his option for the whole or any part of damages from any of the tortfeasors.

10. I have considered the arguments advanced by the learned counsel for petitioner and respondent.

11. The Hon'ble Apex Court in **Khenyei Vs. New India Assurance Company Limited**, [2015 (9) SCC 273] has held as under:

“

22. What emerges from the aforesaid discussion is as follows :

22.1. In the case of composite negligence, the plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

.....

22.3. In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/Tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of the payment to the



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plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/Tribunal, in the main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

22.4.It would not be appropriate for the court/Tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.”

12.It is clear that in the case of composite negligence, the claimant is entitled to sue all or any one of the joint tortfeasors and recover the entire compensation as from any one of the tortfeasors as the liability is joint and several. In case, all tortfeasors were impleaded, the apportionment/extent of their negligence has been determined by the court/Tribunal. In case, where only one of the joint tortfeasors is impleaded, the said tortfeasor can recover the proportionate amount from the other tortfeasor in the execution proceedings.



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13.The claimant is however taking the risk to recover the amount solely from the petitioner. It is open for the petitioner to state that there was no case made out for composite negligence and that the case claim was to be made only against the 6th respondent who has not been impleaded and thus, the Claim Petition filed by the claimant was liable to be dismissed.

14.As such, there are no merits in the present Civil Revision Petition. Therefore, the present Civil Revision Petition is liable to be dismissed. It is accordingly dismissed and the order dated 19.04.2022 passed in I.A.No.03 of 2021 in MCOP.No.1990 of 2018 on the file of the IV Additional District Court, Tirunelveli, shall stand confirmed. Consequently, the connected Miscellaneous Petition is closed. No costs.

14.07.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The IV Additional District Judge,
IV Additional District Court,
Tirunelveli.



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C.SARAVANAN, J.

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