THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.2861 OF 2014

DATED 6TH MARCH, 2015

Between:

Riyan Begum and others .. Petitioners

and

Anuthula Balaraj and others .. Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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O R D E R

The claimants in M.V.O.P.No.832 of 2010 on the file of the learned Principal District Judge, Warangal, are the petitioners herein. They are aggrieved by the Order dated 01.07.2013 passed in I.A.No.570 of 2012 in the said O.P., whereby the learned Principal District Judge, Warangal, allowed the I.A. and deleted the petitioner therein, the second respondent insurance company in the main O.P. and also in this C.R.P., from the array of parties in the claim petition.

M.V.O.P.No.832 of 2010 was filed by the petitioners for compensation under the provisions of the Motor Vehicles Act, 1988, on account of the death of one Mohammed Sajith Jilani Sarwar in a motor vehicle accident. The second respondent insurance company was impleaded in the claim petition as the alleged insurer of the vehicle involved in the accident. While so, the said insurance company filed the subject I.A. in the O.P. seeking to be deleted from the array of parties on the ground that the Insurance Policy covering the offending vehicle, which was filed by the claimants, disclosed that the policy was valid from 12.04.2010 to 11.04.2011 whereas the accident in question admittedly took place on 09.04.2010.

The petitioners herein contested the said I.A. by relying upon the Motor Vehicle Inspector's Report wherein reference was made to Insurance Cover Note No.002300041602 of the second respondent insurance company, which evidenced validity of the insurance from 09.04.2010 to 08.04.2011. However, relying upon the Policy of Insurance, the learned Principal District Judge, Warangal, concluded that it did not cover the vehicle at the time of the alleged accident and that the second respondent company in the claim petition had no liability in so far as compensation payable to the claimants was concerned. The I.A. was accordingly allowed deleting the second respondent insurance company from the array of parties.

Sri Ajay Kumar Madisetty, learned counsel for the petitioners/claimants, contended that in the light of the Motor Vehicle Inspector's Report, which indicated that the Insurance Cover Note issued by the second respondent company mentioned different dates when compared with the Insurance Policy, it had to be independently determined as to whether the said company was liable as on the date of the alleged accident and it was therefore premature on the part of the Court below to allow deletion of the name of the said company from the array of parties at this stage.

Opposing this contention, Sri T. Mahender Rao, learned counsel for the second respondent insurance company, contended that the petitioners/claimants had thereafter impleaded Bajaj Allianz General Insurance Company Limited as a party to the claim petition, being of the opinion that the said insurance company would be liable as the insurer of the vehicle as on the date of the alleged accident, and therefore, the second respondent insurance company was clearly not a proper and necessary party to the claim petition.

As the matter stands, it is not clear as to which of the two insurance companies was the insurer of the vehicle as on the date of the alleged accident. Admittedly, there is a controversy as to coverage by the second respondent insurance company in the Insurance Cover Note issued by it as opposed to the Policy document. Unless this contradiction as to dates is resolved, the second respondent insurance company cannot be absolved of liability. The learned Principal District Judge, Warangal, having noted the reference to the Insurance Cover Note in the Motor Vehicle Inspector's Report, an independent piece of evidence, failed to appreciate the issue in its entirety and by relying only upon the Policy document held the second respondent insurance company to be free of liability. This finding, in the considered opinion of this Court, was uncalled for at this stage and was wholly premature. Now that both the insurance companies which had insured the vehicle in question are made parties to the claim petition, it is for the Court below to resolve the issue and affix responsibility upon the insurance company which is actually liable.

The order under revision deleting the second respondent insurance company from the array of parties in the claim petition is therefore set aside and the C.R.P. is allowed. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

6TH MARCH, 2015

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