

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.186 of 2016
and C.M.P.No.942 of 2016

V.M.Rajendran

... Petitioner

Vs.

1.Vepati Rani
2.Vepati Gayathri
3.Vepati Samanvitha
4.Vepati Rosi Naidu
5.B.Gangadhara Rao

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the decree and judgment dated 09.12.2015 made in I.A.No.1153 of 2015 in M.C.O.P.No.1 of 2014 on the file of Motor Accident Claims Tribunal [Sub Court], Tiruttani.

For Petitioner : Mr.S.Manohar

For Respondents : Mr.S.Udhayakumar [for R1 to R4]

ORDER

In a motor accident claim case, the claimants chose to make the owner and insurer of only one of the three vehicles involved in a composite accident as party respondents. The insurer of the said vehicle filed an interlocutory application in I.A.No.1153 of 2015 to implead the owner of a Tata Indica car bearing registration No.AP-09-X-7418, whose insurance particulars are not available and

the owner and insurer of a mini goods van bearing registration No.AP-29-TB-7635 as party respondents in the M.C.O.P.No.1 of 2014 so as to enable the Tribunal to find out, who was at fault and in case of composite negligence, how the liability is to be apportioned among the owners of the three vehicles involved in the accident.

2. It is not a claim made under Section 163[A] of the Motor Vehicles Act, 1988, in which the claimant shall not be required to either plead or prove any fault on the part of the respondent. Had the petition been filed under the said provision to enforce the no fault liability, the owner or insurer of one of the vehicles alone, who are proceeded against, may not have a right of seeking impleadment of the owners and insurers of the other two vehicles. On the other hand, since the claim was made under Section 166 of the Motor Vehicles Act, 1988, the question of negligence has got to be gone in the event of the owner and the insurer of one of the vehicles who alone are made respondents in the M.C.O.P., they shall be entitled to move a petition for impleadment of owners and insurers of the other two vehicles, so that, a finding regarding the person, who is responsible for the accident, could be rendered and in case, the Tribunal comes to the conclusion that it is a composite negligence of all the vehicles or two out of three vehicles that involved in the accident, it will pave the way for apportionment of the liability among the owners of the said vehicles to be borne by the respective insurance companies.

3. In any event, the claimants are not going to be affected, as there won't be any problem in getting the compensation for which the claimant would be entitled. In the event of the Tribunal passing an award holding the owners and

insurers of the vehicles involved in the accident jointly and severally liable, the claimant shall be entitled to enforce the award as against the owner and insurer of one of the vehicles, leaving the owner or the insurer of the said vehicle to seek rateable contribution from the owners and insurer of the other vehicles according to the award. The learned Tribunal, without considering the above said aspects, seems to have dismissed the petition by the impugned order. Hence, the present revision came to be filed challenging the impugned order of the Tribunal under Article 227 of the Constitution of India.

4. The learned counsel for the respondents herein/claimants, after making a meek attempt to contend that as against their choice of the respondents against whom compensation is claimed, the respondents cannot seek impleadment of others, made a contention that since the proposed respondents were not made party respondents in the impleading petition, the order of the Tribunal dismissing the petition can be sustained.

5. A perusal of the petition in I.A.No.1153 of 2015 in M.C.O.P.No.1 of 2014 on the file of the Tribunal shows that the New Indian Assurance Company Limited is the petitioner therein, whereas the claimants are the respondents 1 to 4 and the insured namely owner of the vehicle insured with the petitioner is the 5th respondent in the said application. The proposed parties, who are three in number, have not been shown as party-respondents in the impleading petition.

6. It is a technical flaw and the petitioner need not be denied his right of impleading the proposed parties as party-respondents in the M.C.O.P.No.1 of 2014.

Hence, this court comes to the conclusion that the impugned order of the Tribunal dismissing the impleading petition is bound to be interfered with and set aside and at the same time, the impleading application I.A.No.1153 of 2015 has got to be remitted back to the Tribunal to give an opportunity to the petitioner therein to amend the petition making the proposed parties as party respondents, issue notice to the proposed parties and then decide the matter on merits.

Accordingly, the Civil Revision Petition is allowed in part. The order of the Tribunal dated 09.12.2015 made in I.A.No.1153 of 2015 in M.C.O.P.No.1 of 2014 is set aside. I.A.No.1153 of 2015 is remitted back to the Tribunal with a direction to give an opportunity to the petitioner therein to amend the petition showing the proposed parties as party-respondents in the array of parties, issue notice to them and then decide the application on merits. Consequently, connected Miscellaneous Petition is closed.

02.02.2016

Index : Yes
Internet : Yes

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To
The Subordinate Judge,
Tiruttani.

P.R.SHIVAKUMAR, J.

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