

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.3758 OF 2011

ORDER:

The civil revision petition is filed questioning the order dated 10.08.2011, passed by the Special Judge for Trial of Cases under SCs & STs (PoA) Act-cum-Additional District & Sessions Judge, Vizianagaram in I.A.No.1164 of 2011 in M.O.P.No.946 of 2010.

It is the case of the petitioner-Insurance Company that it had filed I.A.No.1164 of 2011 before the Tribunal seeking to implead the driver and owner of the motor cycle bearing No. AP 35 H 0959 as respondents 4 and 5 on the ground that the rider of the above said motor cycle dashed the scooter on which the deceased was traveling as pillion rider and when the deceased fell on the road and thereby sustained injuries and succumbed to the same. It is stated that a criminal case was also lodged and charge sheet came to be filed against the driver and owner of the motor cycle and the owner of the lorry and thereby indicating the negligence on the part of the owner of the lorry and the driver of the motor cycle. However, the opposite parties made in the M.O.P only the driver of the lorry, the owner of the motorcycle and the insurance company as respondents. The driver of the lorry as well as the owner of the motor cycle are required to be made as party respondents so as to enable the Tribunal to come to a conclusion and arrive at the negligence which has resulted in the accident. The Tribunal failed to appreciate these aspects and dismissed the impugned IA erroneously.

Learned counsel for the respondents 1 to 3 also submits that the Tribunal ought to have been allowed the impugned IA to implead the owner of the lorry and driver of the motorcycle which were involved in the accident. In that view of the matter, he reported no objection for allowing the impugned I.A and direct the Tribunal to implead the respondents 4 and 5 as party respondents to the M.O.P No.946 of 2010.

Heard the learned counsel for the petitioner. Even though notices were served on the proposed respondents 4 and 5, none appeared for them.

In the facts of the present case, when once it is admitted that initially accident had occurred between the motorcycle and the lorry and in the process the lorry was also involved, it would be necessary for the owner of the lorry and the driver of the motorcycle to be made as party respondents to determine the proportionate liability if any in the event Tribunal comes to a conclusion that there was infact negligence on the part of the owner of the lorry and the driver of the motorcycle and the compensation amount necessarily to be proportioned. In that view of the matter, the dismissal of the impugned I.A refusing to implead the proposed respondents 4 and 5 as party respondents is unsustainable and accordingly the same is liable to be set aside.

Accordingly, the civil revision petition is allowed setting aside the order dated 10.08.2011, passed by the Special Judge for Trial of Cases under SCs & STs (PoA) Act-cum-Additional District & Sessions Judge, Vizianagaram in I.A.No.1164 of 2011 in M.O.P.No.946 of 2010. However, the Tribunal is directed to implead the proposed respondents 4 and 5 as party respondents to M.O.P.No.946 of 2010 after issuance of notices to them. It is needless to mention that the impleaded respondents shall have to be given the opportunity to put forward their case in accordance with law. No order as to costs.

Miscellaneous Petitions pending, if any, in this revision petition shall stand closed.

CHALLA KODANDA RAM,J

Date:29.01.2016.

Note:

Issue CC in one week.

B/o.

Gk

