

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 541 OF 2019

UDHESH KARMALKAR., ... Petitioner

Versus

PARTHAMESH P. PITRE AND 4 ORS., ... Respondents

Shri Dinesh Eknath Naik, Advocate for the Petitioner.

Ms.Y. Mandrekar, Advocate for the Respondent No.5.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 5th November, 2019

P.C.:

Heard Shri D. Naik, learned Advocate for the petitioner. Ms. Y. Mandrekar, learned Advocate for the respondent no.5.

2. The petitioner has taken exception to the order dated 21.07.2018 passed by the learned Motor Accident Claims Tribunal(MACT), Panaji pursuant to which she declined to grant the application of the petitioner to delete him from the proceedings. It was also his contention that an application was moved by his insurer i.e. the respondent no.5 herein to delete it from the proceedings when the learned MACT instead of deleting the respondent no.5, had on the contrary ordered the addition of the petitioner as a party to the proceedings. The order

passed by the learned MACT was totally erroneous and was liable to be quashed.

3. The learned Advocate for the respondent no.5 submitted that the order passed by the learned MACT had not been challenged by it. Nonetheless, in case this Court was inclined to grant the application of the petitioner, the respondent no.5 too had to be dropped from the proceedings as even otherwise an offence was registered simplicitor against the driver of Maruti vehicle, owned by the respondent no.2 and insured with the respondents no.3. The respondents no.5 was also required to be dropped from the proceedings.

4. i have gone through the records and considered their respective submissions.

5. It is amply borne out from a bare reading of the petition that the respondent no.1 as the original petitioner had clearly set out in his petition that the accident was caused solely due to the rash and negligent driving of the Swift car driver resulting in the injuries to him, apart from the damages to the vehicle, though no rashness or negligence whatsoever was attributed to the petitioner as the rider of the Hero Honda Splendor motor cycle. Looking thus to the tenor of the petition, i find that no rashness or negligence was attributed to the rider of the Splendor motor

cycle and there was no basis for the MACT to implead him as the respondent no.5 to the proceedings. It appears that the learned MACT was carried away by the earlier order dated 18.01.2017 pursuant to which the MACT was inclined to reject the application of the respondent no.5 and instead to join the petitioner as the respondent no.5 as a party to the proceedings.

6. Even otherwise, as rightly pointed out by Ms. Mandrekar, the learned Counsel for the respondents no.5, an offence was solely registered against the driver of the Maruti Swift car for having first given a dash to the Hero Honda motor cycle driven by the petitioner and then to the Karisma motor cycle driven by the respondent no.1 herein. It is thus looking to the manner in which the order has been passed, that it cannot stand the test of scrutiny and thus, the impugned order is liable to be interfered with.

7. In view thereof, the petition is allowed, the impugned order is quashed and set aside. So also it follows as a necessary corollary that the respondent no.5 cannot continue in the proceedings when there is no element of rashness and negligence attributed to the petitioner and it would follow that the respondent no.5 is also required to be dropped from the proceedings.

8. The petition is accordingly disposed off in these terms.

NUTAN D. SARDESSAI, J.

MF/-