IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST.) NO. 1033 OF 2016

United India Insurance Company Limited]
Regional Office No.1]
Motor Third Party Claims Hub]
Cambata Building, 3rd floor]
42, Maharshi Karve Road,].. Appellant/Original
Mumbai – 400 020] Insurer

Vs.

1. Mr.Rajesh Devnand Sawant]
Aged – about 42 years]
Residing at : A/54, Sunil Niwas CHS]
Off Lokhandwala Road, Opp. Gaikwad]
Hall, Four Bunglows,]
Andheri (W), Mumbai – 400 053]
]
2. Mr.Joby K.A.]
Karokappiliu Housse,]
Kadavantha Road, Kochi]
District – Ernakulam,]
Kerala – PIN : 682 020]

3. Cholamandalam M.S. Gen. Ins.]
Co. Ltd.]
Leela Business Park, Gr. Floor,]
Kurla Road, Andheri (E), Mumbai].. Respondents

Mr.Mehta I/b KMC Legal Venture for applicant.

Mr.T.J. Mendon, Advocate for respondent No.1.

Mr.Rajesh Kanojia a/w. Ms.Shrutika N. Patil I/b Res Juris for respondent No.3.

CORAM : N.J. JAMADAR, J.

DATE : 11TH MARCH 2019

JUDGMENT :

1. With the consent of the counsels for the parties, having regard to the

limited nature of the controversy involved in the matter, the appeal is taken up for hearing finally, at the stage of admission itself.

2. The challenge in this appeal is to the judgment and award dated 2nd March 2015 passed by the Motor Accident Claims Tribunal (CR-8), Mumbai, whereby the Tribunal directed the respondent No.2-United India Insurance Limited-appellant herein, to jointly and severally pay the amount of Rs.4,26,478/- inclusive of the compensation awarded under Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred as 'the Act') along with interest @ 7.5% per annum from the date of the application till its realization.

3. The parties are hereinafter referred to in the capacity in which they were arrayed before the Tribunal.

4. The applicant has filed the claim with the assertion that on 1st January 2008 at about 1:00 a.m. when the applicant was riding a motorcycle along with his friend on the road at Manakkapady Area in Paravoor, Ernakulam, Kerala, the Motor Tempo bearing Registration No.KL-07-BE-5440 came from the oppose direction in a very high speed and knocked him down, due to which the claimant sustained grievous injuries. Thus, the applicant claimed compensation under the various heads. During the pendency of the claim petition, the respondent No.2,

preferred an application to implead Cholamandalam General Insurance Company Limited on the premise that the offending vehicle was also insured with the said insurer at the relevant time.

5. The learned Member of the Tribunal, after appraisal of the evidence tendered and the material placed on record, was persuaded to partly allow the application and awarded the compensation as indicated above. Being aggrieved, the insurer has preferred this appeal.

6. I have heard Shri Mehta, the learned counsel for the appellant, Shri T.J. Mendon, the learned counsel for respondent No.1 and Shri Rajesh Kanojia, the learned counsel appearing for respondent No.3-Cholamandalam General Insurance Company Limited.

7. The learned counsel for the appellant submitted that though the insurer has raised multiple grounds in the appeal memo questioning the quantum of the compensation awarded to the applicant yet having regard to the nature of the injuries and the total amount of the compensation, the appellant does not wish to press those grounds. It was further submitted that the only point, which the appellant would urge, is that the vehicle was insured with the both insurers i.e., the appellant and Cholamandalam General Insurance Company Limited, at the time the vehicle met with the accident. Therefore, the learned Member of the Tribunal ought not have

totally exonerated the respondent No.3-Cholamandalam General Insurance Company Limited.

8. In opposition to this, the learned counsel for the respondent No.1 submitted that the fact that the vehicle was insured with two insurers simultaneously, does not detract materially from the claim of the applicant, and the applicant had a choice to prosecute the matter against either of the insurers.

9. The learned counsel for the respondent No.3-Cholamandalam General Insurance Company Limited submitted that the Tribunal has exonerated the respondent No.3, as there was no averment against the said respondent No.3 nor any relief was claimed against it. Therefore, according to the learned counsel for the respondent No.3, the said ground of appeal is devoid of merits and the appeal deserves to be dismissed *in-limine.*

10. It is not disputed that the vehicle in question was insured with the respondent Nos.2 and 3 when it met with the accident. The Tribunal dealt with this issue and recorded the finding as under :-

> *"9 In the present matter, insurer viz., Cholamandalam Gen. Insu. Co. Ltd. was also made party on the basis of application of advocate of United India Insu.Co. Ltd. However, during course of trial, it was specifically pointed out that except amendment in title clause, there are absolutely no pleadings against said insurer in application or even in substantive evidence. Relief is also not claimed against the Cholamandalam Gen. Insurance Co. Ltd. Applicant has no*

> *where pleaded that vehicle was insured with Cholamandalam Gen. Insurance Co. Ltd. But according to pleading, it was only insured with United India Insurance Co. Having regards to all these facts as there is absolutely nothing against said company casting liability on Cholamandalam Gen. Insu. Co. Ltd. does not arrive at all. Therefore, as prayed by insurer advocate, company has to be absolved from liability. I, therefore, do not hesitate to record my findings against that issue in affirmative."*

11. It is evident that apart from impleading Cholamandalam General Insurance Company Limited as a party-respondent to the application, neither any assertions were made against it nor the applicant claimed reliefs against the said insurer. It is trite law that even in the case of composite negligence, the claimant has a choice to prosecute the remedy against all or either of the joint tort feasors and insurers or insurer, as the case may be. In the case at hand there is only one tort feasor. The vehicle, however, stood insured with two insurers. But the liability of the insurer to indemnify the insured in respect of the claim does not get diminished because of the fact that simultaneously the vehicle was registered with another insurer. Thus, no error is found in the view recorded by the learned Member of the Tribunal.

12. The learned counsel appearing for the appellant submitted that the appellant may peruse such remedy against the co-insurer-Cholamandalam General Insurance Company Limited as may be permissible in law.

13. Per Contra, the learned counsel for the respondent No.3 submitted that any observations made by this Court will have a bearing upon the defence of Cholamandalam General Insurance Company Limited especially when the said Company has been totally exonerated by the Tribunal.

14. In the backdrop of the aforesaid consideration and submissions, this Court can only observe that the appellant may pursue the remedies against Cholamandalam General Insurance Company Limited as may be available in law. This does not imply that the *inter-se* dispute between the appellant and Cholamandalam General Insurance Company Limited is determined by this Court or it is held that the appellant has a cause of action against Cholamandalam General Insurance Company Limited. The later will have all the defences, which are available in law, in the event, such a proceedings is instituted by the appellant including that the Tribunal has completely exonerated it.

15. In view of the above, no interference is warranted in the judgment and award of the Tribunal. Thus, the appeal stands dismissed. In the circumstances, there shall no order as to costs.

16. The amount deposited by the appellant in the instant proceedings, be remitted to the Motor Accident Claims Tribunal, (CR-8), Mumbai.

[N. J. JAMADAR, J.]