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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO(OS) 42/2019 & CM Nos.9592-93/2019

ROBBINS TUNNELLING & TRENCHLESS TECHNOLOGY (INDIA) PVT LTD ..... Appellant

Through: Mr.R.P. Luthra with Mr.Naresh C. Sharma, Mr.Ajay Sharma & Mr.Ankur Saxena, Advs.

versus

MALCOLM JOHN CAMPBELL ..... Respondent

Through: Mr.C. Mohan Rao with Mr.Lokesh Kumar Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% 12.03.2019

The defendant/appellant assails the order passed by the learned Single Judge on 13.12.2018 in IA No.9654/2018. The learned Single Judge has dismissed the said application preferred by the appellant for impleadment of United India Insurance Co. Ltd. as a defendant in the suit. The respondent/plaintiff was employed by the appellant and on 18.03.2015, during the course of his employment, he suffered an accident. In March, 2016, he preferred a civil suit being CS(OS) No.152/2016 claiming compensation. The appellant filed its written statement in July, 2016, to which a replication was filed by the plaintiff. In September, 2016, the appellant filed an amended written statement, the purpose of the amendment being to incorporate pleadings with regard to a valid insurance policy existing on the date of the accident including a Group Personal Accident Tailor Made Policy. On 19th July, 2018, i.e. after a lapse of nearly another two years, the appellant moved the application in question under Order 1 Rule 10 CPC seeking impleadment of M/s. United India Insurance Co. Ltd. i.e. IA No.9654/2018. Pertinently, by this time, issues had already been framed in the suit on 04.05.2018. In July, 2018, the plaintiff had also filed his evidence by way of affidavit. Though notice of the application was issued to the insurance company and time was granted to them to file reply, but the insurance company neither filed any reply nor appeared and contested the application. The aforesaid application for impleadment was however, opposed by the plaintiff. The learned Single Judge has dismissed the application, leading to the filing of the present appeal. While doing so, the learned Single Judge has taken note of issue no.(iii), which reads as follows:-

> *"(iii) If the above issues are decided in favour of the plaintiff, whether the claim if any of the plaintiff against the defendant, owing to the Group Personal Accident Tailor Made Policy issued by M/s. United India Insurance Company Limited, is limited to the extent as provided therein? OPD"*

The submission of Mr.Luthra, learned counsel for the appellant, is that since the plaintiff was covered by the Group Personal Accident Tailor Made Policy, the impleadment of the insurance company is necessary and proper so that there is a final adjudication of the liability, if any, of the insurance company. He submits that non-impleadment of the insurance company would lead to multiplicity of proceedings. He further submits that the aforesaid issue as framed by the learned Single Judge in itself shows that the presence of the insurance company in the suit is necessary.

On the other hand, Mr.Rao opposes the appeal and submits that the application was moved highly belatedly with a view to delay the trial of the suit. He submits that the plaintiff was not even informed about the existence of any Group Personal Accident Tailor Made Policy till the time of filing of the suit or soon thereafter. The amendment itself was made in the written statement only in September, 2016, even though the suit had been filed in March, 2016 and the application for impleadment was then moved nearly two years thereafter. By then, not only the issues had been framed, but the plaintiff had also filed his evidence by way of affidavit. Mr.Rao further submits that the order passed by the learned Single Judge is a balanced one and takes care of the interests of both the parties.

Having heard learned counsels and perused the impugned order, we are of the view that the impugned order does not call for any interference. The application for impleadment of the insurance company was moved highly belatedly even though the appellant was well aware of the existence of the insurance policy when the appellant first filed its written statement. In fact, it appears that the appellant/defendant did not inform the respondent/plaintiff about the existence of the relevant insurance policy. Had that been done by the appellant, the respondent/plaintiff could have taken steps to make his claim before the insurance company expeditiously and also to implead the insurance company as a party defendant. In our view, the learned Single Judge while passing the impugned order has protected the rights of both the parties and has inter alia observed as follows:-

> *"18. The counsel for the plaintiff opposes the application and states that the policy does not insure the claims subject matter of the present suit. The counsel for the plaintiff states that Ex.PW1/1 supra refers to a Group Mediclaim/Hospitalisation Policy and does not refer to the Group Personal Accident Tailor Made Policy which has been referred to in the issue supra. He also states that the defendants/applicants in the written statement referred to expired policy and have only subsequently by way of amendment to the written statement filed the existing policy. It is also stated that under the Group Personal Accident Tailor Made Policy, claim had to be made immediately on occurrence of the accident but the defendants/applicants never informed the plaintiff of the same and informed of the Group Personal Accident Tailor Made Policy after about 2½ years and by which time it was not possible to raise a claim.*
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> *19. I am of the view that the issue having already been framed as aforesaid and the pleas of the parties being as aforesaid, there is no need to implead United India Insurance Co. Ltd. Needless to state that if the defendants/applicants prove that as per the terms of employment the claim as made against the defendants/applicants should have been only against United India Insurance Co. Ltd., the consequences shall follow. Conversely, if the plaintiff proves what is being contended and is recorded hereinabove, the issue aforesaid will be decided against the defendants/applicants."*

In the light of the aforesaid, we are not inclined to interfere in the impugned order and the same is dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

MARCH 12, 2019

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