

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.2649 of 2018
and CMP.No.15821 of 2018

Madheswaran

..Petitioner

Vs.

- 1.Amutha
- 2.Minor Pooja
- 3.Minor Hemalatha
R2 & 3 rep. by their N.F.
Guardian / Mother Amutha
- 4.Lakshmanan
- 5.Lakshmi
- 6.Murugan
- 7.The Branch Manager,
TATA AIG General Insurance Company Ltd.,
Salem

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 25.06.2018 made in IA.No.495 of 2017 in MCOP.No.2656 of 2015 on the file of Motor Accident Claims Tribunal(The II Additional District Court), Salem and allow this Civil Revision Petition thereby implead the respondents 6 and 7 herein as parties in the above MCOP.

For Petitioner : Mr.S.Conscious Ilango

For Respondents

For R1 to 5 : Mr.P.Tamilavel

For R7 : Mr.N.Vijayaraghavan
for M/s.M.B.Gopalan Associates

R6 : Not ready in notice

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 25.06.2018 made in IA.No.495 of 2017 in MCOP.No.2656 of 2015 on the file of Motor Accident Claims Tribunal(The II Additional District Court), Salem, thereby dismissing the petition to implead the other vehicle which was involved in the accident.

2. The petitioner is the first respondent and the respondents 1 to 5 are the claimants in the claim petition. The respondents 1 to 5 filed claim petition seeking compensation for the death of the first respondent's husband who died in the accident occurred on 01.11.2015. According to them, when the deceased was travelling in the Maxi Pickup van, the driver of the lorry owned by the petitioner herein drove it from the opposite direction in a rash and negligent manner and dashed against the van. Due to the said accident, the deceased sustained head injury and died. FIR was also registered as against the driver of the lorry owned by the petitioner herein.

According to the petitioner, though FIR was registered as against the driver of the lorry owned by the petitioner herein, there was contributory negligence for the accident due to which the deceased died. Therefore, the other vehicle which was involved in the accident is also necessary party to the claim petition for effective trial. In this regard, the learned counsel for the petitioner submitted that in order to prove the factum of composite negligence, the owner and insurer of both the vehicles should be impleaded as parties to the claim petition.

3. Per contra, the learned counsel for the respondents would submit that it is for the claimants to decide the party from whom he has to claim compensation. The petitioner cannot compel the claimants to implead the proposed party in the claim petition.

4. It is seen that though FIR was registered as against the driver of the vehicle owned by the petitioner herein, admittedly when the deceased was travelling in a Maxi Pickup van, the lorry owned by the petitioner hit the Maxi Pickup van and accident was took place. As rightly pointed out by the learned counsel for the petitioner, when the petitioner has taken a contention regarding composite negligence, in order to prove the same, the other vehicle's owner as well as the insurer of the said vehicle should be impleaded as parties to the claim petition for effective trial.

5. It is true that the claimant has to decide the party from whom he has to claim compensation. Whereas for the effective trial, both the vehicles' owners as well as the insurer are the necessary party to prove the composite negligence. By impleading the owner and insurer of the other vehicle, it cannot be said that the court has absolved petitioner from liability. The court would be in position to decide the matter in the presence of all the parties and therefore this Court is of the view that the trial court was not correct in dismissing the petition to implead the proposed parties.

6. In view of the above, this civil revision petition is allowed and the order dated 25.06.2018 passed in IA.No.495 of 2017 in MCOP.No.2656 of 2015 on the file of Motor Accident Claims Tribunal(The II Additional District Court), Salem is set aside. After impleading the proposed parties, the trial court is directed to dispose of the claim petition within a period of six months thereafter. Consequently, connected miscellaneous petition is closed. No order as to costs.

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26.07.2021

Speaking/Non-speaking order
Index : Yes/No
lok

To

The Motor Accident Claims Tribunal
(The II Additional District Judge),
Salem



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G.K.ILANTHIRAIYAN,J.

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