



C.R.P.(PD).No.1802 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

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and

C.M.P.No.14009 of 2021

The New India Assurance Company Limited,
Rep. by its Divisional Manager,
Divisional Office, Officers Lane, Vellore.

.. Petitioner

Vs.

1.Varalakshmi
2.Minor Vigneshwaran
3.Minor Oviya
4.Mohan Durai
5.Bharath Constructions,
19/34, R.S.Road,
Kondasamuthiram,
Gudiyattam – 632 602.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 24.03.2021 passed in I.A.No.1 of 2019 in MCOP.No.33 of 2018 on the file of the Sub-Ordinate Court, Gudiyattam.



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For Petitioner : Mr.S.Dhakshinamoorthy

For Respondents : Mr.G.Vinodkumar for R1
Mr.R.Paramasivam for R5
R2 to R4 – No appearance

ORDER

This civil revision petition has been filed against the order of the learned Sub-ordinate Judge, Gudiyattam made in I.A.No.1 of 2019 dated 24.03.2021. The said I.A.No.1 of 2019 was filed by the 2nd respondent / Insurance Company seeking impleading of the owner of the vehicle that was driven by the deceased at the time of the accident.

2.According to the Insurance Company, since the First Information Report itself shows that two vehicles were involved in the accident, owners of both the vehicles should be made parties to the claim petition. Unless the owners of both the vehicles are made parties to the petition, the question of contributory negligence cannot be decided in the proper perspective.



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3.This application was resisted by the proposed party contending that it is the driver of the offending vehicle belonging to the 1st respondent insured with the 2nd respondent Insurance Company, who was negligent in driving the vehicle and even according to the First Information Report, the cause of accident is the negligent and rash driving on the part of the driver of the lorry bearing No.TN-41-AL-6256, which belongs to the 1st respondent in the original petition and insured with the 2nd respondent. Therefore, there is no necessity for impleading the owner of the vehicle, which was driven by the victim. The Tribunal has concluded that in the absence of any evidence to show that the deceased has contributed to the accident, the owner of the lorry that was driven by the deceased is not a necessary party to the MCOP.

4.Heard Mr.S.Dhakshinamoorthy, learned counsel appearing for the petitioner, Mr.G.Vinodkumar, learned counsel for the 1st respondent and Mr.R.Paramasivam, learned counsel for the 5th respondent. Though the respondents 2 to 4 were served, they have not appeared either in person or through counsel, duly instructed.



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WEB COPY 5.Mr.S.Dhakshinamoorthy would draw my attention to the judgment of the Hon'ble Division Bench of this Court in **Oriental Insurance Company Ltd., Kumbakonam vs. Thirugnanasambandam** reported in **2020 (1) TN MAC 481** wherein, the Hon'ble Division Bench of this Court has pointed out that in cases of collision, owners of both the vehicles must be made parties to the MCOP. In fact, the Hon'ble Division Bench had issued a direction to the Tribunals all over the state and in Pondicherry not to number any claim petition without impleading the owner / insurer of the vehicle, which was involved in the accident. The question, whether the other vehicle contributed to the accident or not will have to be gone into only at trial. Therefore, the Tribunal was not right in dismissing the application for impleading the owner of the other vehicle involved in the accident on the ground that there is no evidence of negligence on the part of the driver of the other vehicle.

6.Contending contra, Mr.R.Paramasivam, learned counsel for the 5th respondent would submit that even in the FIR, there is nothing to show that



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the victim / driver of the lorry bearing registration number MSV-7362 had contributed to the accident and therefore, the Trial Court was right in rejecting the application for impleading.

7.I am unable to countenance the submission of the learned counsel for the respondent. Admittedly, there was a collision of two vehicles. Both are heavy vehicles and both the drivers had died. The question of fact as to whether there was any negligence on the part of the driver of one of the vehicles or that both the drivers were negligent and both of them have contributed to the accident will have to be decided only after evidence is recorded on the issue of negligence.

8.As rightly pointed out by Mr.S.Dhakshinamoorthy, the Hon'ble Division Bench of this Court has found that the practice of not impleading the owner / Insurer of one of the vehicles and getting the award against the one of the insurers alone is not a proper practice. The Hon'ble Division Bench had infact, directed all the tribunals to insist upon impleading of both the vehicle owners if more than one vehicle is involved in the accident



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except in the cases where the other vehicle is unidentifiable.

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9. In view of the direction of the Hon'ble Division Bench, it becomes all the more imperative for the Tribunal to implead the owner of the other vehicle also and relegate issue relating to negligence to the trial stage. I am therefore, of the considered opinion that the order of the Trial Court suffers from material irregularity and the same has to be interfered with. Accordingly, this civil revision petition is allowed, IA.No.1 of 2019 will stand allowed, the proposed party / owner of the lorry bearing number MSV-7362 is impleaded as a party and arrayed as 5th respondent in the original petition. Consequently, connected miscellaneous petition is closed.

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Index: No

Internet : Yes

Speaking order



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To

The Sub-ordinate judge,
Gudiyattam.



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R.SUBRAMANIAN, J.

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