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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2022

CORAM

THE HONOURABLE MR. JUSTICE N. SESHASAYEE

C.R.P. PD No. 1498 of 2020
& C.M.P. No. 8850 of 2020

The Manager,
Bajaj Allianz General Insurance Co. Ltd.,
No. 276 & 277, New No. 497 & 498,
Isanakattima Building, 5th Floor,
Poonamallee High Road,
Arumbakkam, Chennai - 600 106.

... Petitioner

Vs.

1. Vimala
2. C. Varunkumar
3. M/s. Shree K.R.C. Transport Ltd.,
rep. by Mr. Sathishkumar,
No.1/85, GST Main Road,
KRC Complex, Singaperumalkoil,
Kancheepuram District.
4. The Divisional Engineer,
(Construction & Maintenance),
Highways Department,
Thiruvallur.

.. Respondents

Prayer:

Civil Revision Petition under Article 227 of the Constitution of India praying to set aside the order dated 20.11.2019 passed in unnumbered I.A. No.....of 2019 in M.C.O.P. No. 98 of 2018 on the file of the Motor Accident Claims Tribunal - I (Special Court MCOP-I District Judge Level) at Tiruvallur.

For Petitioner :: Mr.N. Somasundar

For Respondents :: Mr.D.Bennington for R1 & R2
Mr.P. Harish,
Govt. Advocate (CS)
for R4



O R D E R

This revision is filed under Article 227 of the Constitution of India to set aside the order dated 20.11.2019 rejecting the unnumbered application in I.A. of 2019 in M.C.O.P. No. 98 of 2018 on the file of the Motor Accident Claims Tribunal - I (Special Court MCOP-I District Judge Level) at Tiruvallur.

2. The facts of the case and the circumstances that necessitated the revision have been explained in the order of this Court dated 04.03.2022 and the said order is reproduced hereunder for convenience:

"This revision is filed as against the order passed in the application filed by the 2nd respondent/Insurance Company in M.C.O.P. No. 98 of 2018 on the file of Motor Accidents Claims Tribunal (Special Court MCOP-I District Judge Level) at Tiruvallur.

2.The claimants in the case are the legal heirs of the victim of a road accident in which the bus belonging to the 1st respondent in the M.C.O.P was involved. The victim of the accident was a motorcyclist and the bus is said to have hit the motorcycle from behind leading to his death.

3.The revision petitioner/Insurance Company took out an application for impleading the Highways Department as an additional respondent in the M.C.O.P. This application was not numbered and hence, the Insurance Company has preferred this revision.

4. Heard Mr.N. Somasundar, learned counsel for the revision petitioner, Mr.D. Bennington, learned counsel for respondents 1 & 2 and Mr.P. Harish, learned Government Advocate (C.S.) for the 4th respondent.

5. Learned counsel for the revision petitioner/Insurance Company took this Court through the rough sketch prepared by the Investigating Officer in the course of investigating the criminal angle of the said road accident and argued that just ahead of the spot, where the accident took place, there were two large craters on the highway and to avoid them, the motorcyclist suddenly swerved the vehicle to the line of motion of the bus involved in the accident,



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and invited the accident. He submitted that the Highways Department has contributed to this negligence.

6. The defence which the Insurance Company is permitted to take in action seeking damages/compensation by the victims of road accident under the Motor Vehicles Act are statutorily prescribed. This Court gathers from the statements of the learned counsel for the revision petitioner that what he indeed seeks to establish is that the driver of the offending vehicle was not negligent.

7. Pleading defence against an allegation of negligence by the Insurance Company is permitted only in cases where the Tribunal has granted leave to the Insurance Company under Section 170 of the Motor Vehicles Act.

8. Be that as it may, even if the narration of the line of defence as delineated by the learned counsel for the revision petitioner is accepted on its face value, it only points to two things:

(a) either the victim suddenly came on the line of motion of the offending vehicle and hence, the accident was an inevitable accident; or

(b) the victim may also have contributed to the occurrence of the accident.

9. Ultimately, the law of negligence is essentially guided by who had the best opportunity to avoid the alleged act of negligence. Any one of the options is possible to post the matter for trial and not for impleading the Highways Department as a party. With or without the crater on the road, the Tribunal may have to appreciate the facts based on evidence on these aspects, which the impleading of the official of the Highways Department is not going to achieve.

11. Learned counsel for the 4th respondent submitted that the particular stretch of road is not maintained by the State Highways Department, but by National Highways Department."

3. Today, learned counsel for the revision petitioner



circulated an answer to the application taken out under the RTI Act by the revision petitioner from the State Highways Department to the effect that the particular stretch of road where the accident took place was maintained by the State Highways Department and also by the National Highways Department.

4. This is strongly opposed by the learned Government Advocate appearing for the State Highways Department and he has also filed a copy of the affidavit of the State Highways Department.

5. This Court does not intend to engage in a fact finding exercise in this revision. There are a few aspects to this case that need some degree of attention. Firstly, the allegation of the revision petitioner is that the accident was an inevitable accident and it had occasioned since the motorcyclist, who was to become the victim of the accident suddenly swerved his vehicle on to the line of motion of the alleged offending vehicle to avoid a huge crater on the middle of the road, which according to it is managed by the State Highways. But, the revision petitioner now wants to implead both State Highways Department as well as National Highways either to absolve itself of the entire liability or at least to minimise its liability. This necessarily leads to the next question as to who had the best opportunity to avoid the accident and whether the accident itself was an inevitable one, as contended by the revision petitioner. But then, it is a larger issue that has to be decided by the Tribunal post enquiry.

6. The other aspect is about apportioning the potential liability which the revision petitioner/Insurance Company of the alleged offending vehicle now faces. This has certain jurisprudential overtones and this may also have to be decided by the Tribunal post enquiry, but, for the present, the debate is about who was managing the stretch of road where the accident took place. Here, this Court witnesses a pingpong game between National Highways and State Highways as to who exactly manages this stretch. It is, therefore, appropriate that both State Highways Department and National Highways Department are arrayed in the party array. This is essentially important in the context of the contention of the revision petitioner that the whole, or at least part of the liability must be fastened on those who are responsible for creating a crater or at least not attending to the same.

7. This Court now sets aside the impugned order and the unnumbered I.A. is to be taken on file, if the papers are otherwise in order. Since the application is not numbered yet, the revision petitioner is also directed to implead the National Highways Authority concerned in the said I.A. and re-present the



same within a period of 15 days from the date of receipt of a copy of this order. The Tribunal is now required to take the application on its file and decide the same, after hearing both sides.

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8. The civil revision petition is disposed of accordingly. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nv

To

1. The Motor Accidents Claims Tribunal,
(Special Court MCOP-I, District
Judge Level), Tiruvallur.

2. COPY TO
The Section Officer,
VR Section,
High Court, Madras-104.

+1cc to Mr.N. Somasundar, Advocate, S.R.No.22666

C.R.P. PD. No. 1498 of 2020

SRA(CO)
CT 27/04/2022