

10.10.2023
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Ct. no. 652
sb

CO 4444 of 2016

**Malay Roy
Vs.
Nabadwip Halder & Anr.**

Mr. Jayanta Kumar Mondal ...for the Petitioner

Affidavit of service filed by the petitioner is taken on record. In spite of service, opposite parties are not represented.

Being aggrieved and dissatisfied with the order no. 35 dated 28.7.2016 passed by the learned Additional District Judge, M.A.C Tribunal, 1st Court, Barasat, North 24 parganas in M.A.C.C. no. 3 of 2010, present application under Article 227 of the Constitution of India has been preferred.

The petitioner contended that the petitioner as claimant filed aforesaid application under Section 166 of Motor Vehicles Act, 1988 before the tribunal. The opposite party no. 2 i.e. Oriental Insurance Company Ltd. contested the said application by filing written statement denying all material allegations made in the claim application. Thereafter, on 24th January, 2014, the opposite party no. 2 filed one petition for joining joint tortfeasors as a party to the suit. The petitioner herein as claimant filed objection against the said petition but the

learned court below by the impugned order, was pleased to allow the application dated 24th January, 2014 filed by the aforesaid opposite party no. 2 and permitted the petitioner to make the vehicle being no. 26C 3971 (police jeep) as a party to the suit and to submit all the relevant documents in respect of the aforesaid vehicle before the court below.

Being aggrieved by the order, learned counsel for the petitioner submits that the order impugned suffers from material irregularity and illegality and the court below has failed to appreciate the position of law. The learned court below erroneously held that as both the vehicles were involved in the said accident, the present case should be heard in the presence of both the vehicles and for that the insurer of the another vehicle being no 26C 3971 (police Jeep) should be made party in his claim case for the ends of justice and that the claimant shall not be prejudiced in any way for impleading the other vehicles in the claim case.

He further contended that the claimant being the dominus litis is entitled to decide against whom he wants to fight to get his claim and against whom he does not want to fight. Here claimant does not want to implead the insurance company of the said vehicle as according to claimant they are neither necessary party nor the present claim case is required to be heard in their presence and that prayer for adding a vehicle as a party is vague which

learned court below over looked. Moreover, an Insurance Company cannot ask claimant to add some other vehicle owner or insurer to be made a party when claimant does not have any claim against said vehicle and claimant does not want to implead such insurer or owner as a party. The contestant insurance company is confined to his liability only and he has no authority to ask claimant to implead and/or to enquire about other vehicles liability, if any. In this context, he relies upon judgment in the case of **The National Insurance Co. Lrd. Vs. Swapan Kumar Dakua & anr.** reported in **2000 WBLR (Cal) 289** and in the case of **Khenyei Vs. New India Assurance Co. Ltd. and Others** reported in **2015 (2) TAC 677 (SC)** to substantiate his contention that entire claim may be preferred by the claimant against all or any of the drivers, owners or insurers. Accordingly, the petitioner has prayed for setting aside the order impugned.

I have gone through the application filed by the petitioner for impleading the other vehicle as a party to the claim case as well as the order impugned. On perusal of the prayer of the claim application, it appears that the petitioner has prayed for impleading vehicle being no. 26C 3971 (police jeep) to make as a party in the suit and to disclose the documents of the vehicle and driving licence of the driver of the said vehicle.

Learned counsel for the petitioner further submits that he does not have any details of the said vehicle and

as such, how the police jeep can be impleaded as a party in the said claim case without having any details about the said jeep. On perusal of the order, it also appears that the court below has ordered by allowing the petitioner/opposite party/insurance company to make the vehicle being no. 26C 3971 (police jeep) as a party to this suit and to submit all the relevant documents in respect of the aforesaid vehicles. When the petitioner has clearly submitted that he does not have the relevant documents in respect of the aforesaid vehicle, the order impugned appears to be vague.

In view of above, C.O. 4444 of 2016 is accordingly allowed. The order impugned being order no. 35 dated 28.7.2016 passed in MACC no. 3 of 2010 by M.A.C. Tribunal, 1st Court, Barasat is hereby set aside. The petitioner herein will be at liberty to pray for discovery and interrogatories for ascertainment of the details of the said vehicle and they will also be at liberty to pray for adding party, if petitioner being claimant so chooses and in the case of filing such application, the court below will dispose of such application after hearing both the parties in accordance with law at the earliest.

The Tribunal will make every endeavour for speedy disposal of the claim case since it is pending for a considerable period of time.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)