

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-4732-2023

Date of Decision : 21.08.2023

Iffco Tokio General Insurance Company Limited Petitioner

Versus

Laxmi and others Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Sanjeev Kodan, Advocate
for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

1. The present revision petition is directed against the order dated 07.08.2023 (Annexure P-8), passed by the Motor Accident Claims Tribunal, Sonipat vide which the application under Order 1 Rule 10 CPC, filed by the petitioner, seeking permission to implead the police department as a party-respondent was dismissed.

2. A claim petition was filed under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') by respondents No.1 to 5 seeking compensation on account of the death of Pardeep Kumar, who expired in a motor vehicle accident which took place on 08.03.2019. FIR No.108 dated 09.03.2019 was registered at Police Station Rai, District Sonipat, under Sections 279/304-A IPC. During the pendency of the claim petition, it came to the notice of the Court that another claim petition

had been filed in which compensation had been sought on account of the death of one Jalam Ahirwar, who was stated to have expired in a motor vehicle accident which took place on 21.03.2019. Incidentally, the offending vehicle in both cases was a car bearing No.HR-05-AM-5901. Though in the present case, the driver was said to be one Ranbir Singh-respondent No.6, the driver in the other case was said to be one Vishal. The Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as 'the Tribunal') issued a direction vide order dated 27.01.2022 (Annexure P-6) to the Superintendent of Police, Sonipat to conduct an inquiry into the matter and to submit a report to the Court. The preliminary enquiry report dated 02.03.2022 was filed in the Court as per which a regular departmental inquiry had been ordered. The petitioner-Insurance Company moved an application Under Order 1 Rule 10 CPC seeking permission to implead the police department as a party-respondent which was dismissed by the Tribunal vide impugned order dated 07.08.2023, leading to the filing of the present revision petition.

3. Learned counsel for the petitioner has submitted that the Tribunal erred in dismissing the application filed by the petitioner. It has been contended that it would be essential to implead the police department as a party-respondent because the police department seems to be conniving with those responsible for the collusion and the Insurance Company apprehends that liability may be fastened upon the Insurance Company if the complete inquiry report is not

brought on the record of the case. Learned counsel made strenuous effort to convince the Court that the police department would infact be a necessary party in the present case and that the Tribunal erred in dismissing the application.

4. I have considered the submissions made by learned counsel for the petitioner but find the same to be devoid of merit. No doubt, the issue is very serious. Two accidents, one stated to have taken place on 08.03.2019 and the other stated to have taken place on 21.03.2019, are stated to have been caused by the same vehicle. The vehicle was taken in custody by the police-party after the accident which was caused on 08.03.2019. The issue was as to whether there was some collusion as a result of which the vehicle had been falsely involved for the purposes of seeking compensation or whether the vehicle had been taken out illegally from police custody. In any case, the Tribunal, vide order dated 27.01.2022 (Annexure P-6) issued a direction to the Superintendent of Police, Sonipat to conduct an inquiry into the matter and to furnish a report to the Tribunal. The said order reads as under:-

“During the course of arguments, learned counsel for the respondent No.3 i.e. Insurance Company argued that the vehicle bearing no.HR-05-AM-5901 is involved in two FIRs in District Sonipat in the month of March, 2019. One FIR bearing No.108 dated 09.03.2019, under Section 279, 304-A, P.S. Rai i.e. involving accident in question in the present claim petition, the vehicle was taken in police possession on 30.03.2019 as per record and released on

superdari on 19.04.2019. While the same vehicle is shown involved in another FIR No.114 dated 21.03.2019, Police Station Gannaur and in that case, the present vehicle has already been taken in police possession on 29.03.2019 i.e. prior to taken in police possession in FIR bearing No.108 of 2019, Police Station Rai on 30.03.2019 and released on superdari on 08.04.2019 in FIR No.114 of 2019 and police recovery memo shows that present vehicle was not transferred to or taken in possession by Police of P.S. Rai from the police possession of P.S. Gannaur. Learned counsel for the respondent No.3 further stated that to get compensation present vehicle No.HR05AM-5901 is falsely involved and there is some hanky-panky in the present case and an enquiry in the present matter from a higher police officer.

Heard. The contention of learned counsel for the respondent No.3 has merit, so, the matter is referred to the Superintendent of Police, Sonipat to hold an enquiry in this matter with the direction to entrust the enquiry to a Officer not below the rank of DSP and sent its report within one month i.e. on or before 28.02.2022. Ahlmad is directed to send the relevant papers i.e. recovery memos of the vehicle in question in both the FIRs along with copy of this order to the Superintendent of Police, Sonipat. Now the present claim petition is adjourned to 03.03.2022 for further proceedings.”

5. In pursuance to the said order, a preliminary report is stated to have been submitted which was produced by the learned

counsel for the petitioner during the course of arguments. This report is stated to have been exhibited as Ex.PX (colly). In this report, it was stated that in the preliminary inquiry report received from the Superintendent of Police, Sonipat, Head Constable Sumit Kumar had taken the Swift Car bearing No.HR-05AM-5901 in police possession in FIR No.108/2019 while the said car was already deposited in the Malkhana in another case bearing FIR No.114 of 2019. Under the circumstances, a regular departmental enquiry was ordered to be initiated against Head Constable Sumit Kumar. As mentioned above, the said report has duly been exhibited before the Tribunal.

6. The petitioner-Insurance Company then moved an application under Order 1 Rule 10 CPC for seeking permission to impleading the police department as a party-respondent. It was the case of the Insurance Company that with a view to bring on record the correct facts, the police department was required to be impleaded as a party-respondent. The Tribunal dismissed this application by way of a well reasoned and speaking order. I have gone through the said order dated 07.08.2023 (Annexure P-8) and find no illegality in the same. While dismissing the application, the Tribunal held as under:-

“Therefore, the real issue is regarding involvement of vehicle and whether it was being driven by their respective drivers in a rash and negligent manner. There is sufficient material on record to conclude factual aspect in both the cases. Whether the police has falsely involved the vehicle or whether the second accident was caused

while the vehicle was in illegal possession of police are the questions which has to be decided while deciding issue of negligence on the part of respondent No.1 in the respective petitions. Whether police on account of faulty investigation has implicated this vehicle wrongly or had plied the vehicle subsequently shall have no bearing for impleadment of police department in present proceedings in which petitioners have sought compensation for rash and negligent driving of vehicle No.HR-05AM-5901.

In case at the time of final hearing this Court comes to the conclusion that vehicle has been falsely implicated in both the case than there will be no liability on the Insurance Company and therefore, there is no need to implead police department who happens to have investigated the matters. Similarly, in case court comes to the conclusion that both the accidents had occurred as being stated by respective petitioners in that case also police has no role in present petitions as its involvement would not effect the ultimate liability of driver, owner and Insurance Company. In third eventuality if court comes to the conclusion that after first accident vehicle was in possession of police and second accident was caused while vehicle was in custody of police and vehicle was plied illegally even then also police department could not be a necessary party as in present proceedings liability of police department can not be determined under the provisions of Motor Vehicles Act. The liability of police department, if any would be towards respondents and petitioners and shall be governed by general law for which Insurance Company/respondents have to seek recourse to general law and therefore, impleadment of police department in present proceedings is neither necessary

nor required for just decision of the case. Respondents, however, shall be free to proceed against insurance company in accordance with law.

Accordingly, application by Insurance Company for impleadment of Police department, Sonipat as respondent is dismissed. Now, to come up on 21.08.2023 for rebuttal evidence to the court witnesses if any and arguments.”

7. I do not find any reason at all to interfere in the said order because no purpose would be served by impleading the police department as a party-respondent. In any case, no action can be taken against the concerned official of the police or against the police department in the proceedings pending before the Tribunal and the Insurance Company would be well within its right to initiate proceedings under any other provision of law as may be available to the Insurance Company. However, for the purposes of the claim petition pending before the Tribunal, no occasion would arise to implead the police department as a party-respondent.

In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

(VIKRAM AGGARWAL)

JUDGE

21.08.2023

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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No