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C.R.P.(PD).Nos.1166 & 1173 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 16.07.2024

Coram

**THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN**

C.R.P.(PD).Nos.1166 & 1173 of 2023 &  
C.M.P.Nos.8158 & 8110 of 2023

The Manager,  
Bajaj Allianz General Insurance Co. Ltd.,  
No.276 & 279, New No.497 & 478,  
Isana kattima Building, 5<sup>th</sup> floor,  
Poonamallee High Road,  
Arumbakkam, Chennai – 600 106.  
... Petitioner in both C.R.Ps.

-Versus-

1.S.Vimala  
2.C.Varun Kumar  
3.M/s.K.R.C.Transport Ltd  
Rep. by Mr.Sathishkumar,  
No.1/85, GST Main Road,  
KRC Complex, Singaperumal Koil,  
Kancheepuram District.  
... Respondents in both C.R.Ps.

4.The Divisional Engineer,  
(Construction and Maintenance),  
National Highways Authority of India,  
SP 34, Industrial Estate 3<sup>rd</sup> Floor,  
Sri Tower, Guindy, Chennai – 32.  
... 4<sup>th</sup> Respondent in C.R.P.No.1166 of 2023

4.The Divisional Engineer,  
(Construction and Maintenance-Tiruvallur),



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Highways Department, Tamil Nadu,  
T.N.Road, Near Oil Mill, Tiruvallur District,  
Tiruvallur – 602001. ... 4<sup>th</sup> Respondent in C.R.P.No.1173 of 2023

Revision filed under Article 227 of the Constitution of India against the order dated 14.02.2023 passed in I.A.Nos.4 & 5 of 2022 in MCOP.No.98 of 2018 on the file of the Motor Accident Claims Tribunal – I, (Special District Court for MCOP No.1), Tiruvallur.

*For Petitioner* : *Mr.N.Somasundaar*

*For Respondents* : *No appearance*  
*1, 2 &*  
*3*

*For Respondent 4* : *Mrs.S.R.Sumathy*

### **COMMON ORDER**

These two civil revision petitions arise out of a common order passed by the learned Motor Accident Claims Tribunal (Special District Court for MCOP-I), Thiruvallur in I.A.Nos.4 and 5 of 2022.

2. Parties will be referred to as per their ranks in the original petition.

3. Two applications came to be filed in I.A.No.4 of 2022 and I.A.No.5 of 2022 in MCOP.No.98 of 2018. These two applications were taken out by the second respondent/Insurance Company to implead the Divisional Engineer,



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(Construction and Maintenance) Highways Department, Tamilnadu and

Divisional Engineer, (Construction and Maintenance), National Highways

Authority of India.

4. MCOP.No.98 of 2018 has been filed, on account of the fact that one Harish died in an accident, by the mother/ first claimant and the brother/the second claimant. The claimants would plead that the said Harish was riding pillion in a two wheeler belonging to one Madhan Kumar @ Vijai. This vehicle was proceeding towards Thiruvallur. At that time, a vehicle belonging to the first respondent/K.R.C.Transport, being driven in a rash and negligent manner hit against the motor cycle causing the accident. They would state that the deceased Harish passed away at Sri Ramachandra Medical College and Hospital while undergoing treatment. On this basis, alleging the rash and negligent manner in which the vehicle belonging to the first respondent and insured with the second respondent was driven, they presented MCOP.No.98 of 2018.

5. On being served with the summons, the second respondent/Insurance Company filed a counter denying the contentions of the claimants. During the



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course of enquiry, an additional counter came to be presented by the second respondent. In the said counter, they took a plea admitting to the fact that the deceased was riding pillion in the motor cycle and it was running on the State Highways. They would state that in order to avoid a large unguarded pothole on the road, the rider Madhan Kumar applied a sudden brake and could not control the motor vehicle and as a consequence, the deceased pillion fell in front of the bus.

6. The second respondent/Insurance Company would also rely upon the accident sketch prepared by the police for vouching the existence of two large unguarded potholes. They would plead that if it were not for the potholes, the accident would not have occurred. On the basis of these pleadings, they took out applications to implead the State Highways as well as the National Highways. These applications filed to implead were returned by the learned Judge stating that the Motor Accident claims Tribunal does not have jurisdiction to pass an award against the State Highways.

7. Challenging the same, a civil revision petition was filed before this Court in CRP(PD).No.1498 of 2020 which came to be ordered on 04.04.2022



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directing the Motor Accident Claims Tribunal to take the unnumbered applications on file and issue notice to the State Highways as well as the National Highways Authorities and to take a call on the applications after hearing both sides.

8. Pursuant to this direction, the second respondent represented the implead applications. The said applications were numbered as I.A.Nos.4 and 5 of 2022. After the receipt of the counters from the State Highways department as well as from the National Highways, the learned Judge came to a conclusion that the Motor Accident Claims Tribunal cannot decide the issues being raised by the second respondent in the counters and refused to implead the proposed parties, against which the present revisions.

9. Notice was ordered in these revisions and the fourth respondent entered appearance through its counsel.

10. I have heard Mr.M.Somasundar for the petitioner and Mrs.S.R.Sumathy for the National Highways.



11. Mr.M.Somasundaar would argue that the Tribunal has the power to implead any person or entity, which is responsible for having caused the accident. He would further state that this Court, by virtue of the order passed in CRP.(PD).No.1498 of 2020, had ordered the impleading of the State as well as the National Highways and therefore, the order of the Tribunal in rejecting the petition as not maintainable is erroneous. For the proposition that it is not necessary that the respondent should always be the insurance company or the owner, he would rely upon the following authorities namely:

***(i) Union of India vs. Bhagwati Prasad and others, AIR 2002 SC 1301; and***

***(ii) Anitha and Others vs. Bangalore Water Supply and Sewerage Board and Another, 2008 SCC Online Karnataka 846***

12. He would state that even the municipal authorities and the Indian Railways can be impleaded as parties to the proceedings, if the accident is caused on account of their negligence. Referring to the FIR in this case, he would state that PW2, the owner of the Motor cycle in which the deceased was travelling, had given a complaint stating that while manoeuvring his vehicle in



order to avoid the pothole, the deceased Harish fell down and the offending vehicle ran over him.

13. Based on this FIR, he would state that when PW2 himself admitted that the accident had taken place on account of the potholes, the impleading of National Highways and State Highways is essential. He would also rely upon a judgment of the Supreme Court in ***Oriental Insurance Co. Ltd., vs. Premlata Shukla and Others, (2007) 2 TNMAC 106 (SC)*** to the effect that the FIR must be read as a whole and since the FIR in this case discloses the existence of the potholes, the State Highways and the National Highways are necessary parties to the proceedings.

14. Per contra, Mrs.S.R.Sumathy would submit that in terms of Section 147 read with Section 166 of the Motor Vehicles Act, the claim petition is maintainable only if the tort had happened on account of the involvement of the motor vehicle and the condition of the road cannot be a ground to implead the National Highways or the State Highways. Therefore, she would plead for dismissal of this revision.



15. I have carefully considered the arguments on either side.

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16. Taking the first plea of Mr.M.Somasundar that the learned Tribunal had committed an error in not following the observations made by this Court in CRP(Pd).No.1498 of 2020 dated 04.04.2022 is concerned, I necessarily have to refer the said judgment.

17. The order came to be passed on account of the fact that the Motor Accident Claims Tribunal -1 at Thiruvallur refused to number the applications filed to implead the authorities. The revisions under Article 227 of the Constitution of India were moved, since the petitions were rejected at the unnumbered stage. The learned Judge while disposing of the applications had made certain observations stating that in case the liability of the State and National Highways are shown, they need to be made as a party to the proceedings. However, he did not give a positive direction to implead both the proposed parties. He had only directed the Motor Accident Claims Tribunal to number the applications and decide the issues afresh. This Court not having granted a positive order to implead the said parties, it will not operate as *res judicata* as the court did not hear and take a final call on these applications.



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18. The Motor Accident Claims Tribunal certainly has the power of the Civil Court to implead parties who are involved in an accident. This power necessarily implies that there must be allegations against the said persons. If a person who has not been made as a party to the said proceedings like owner or the insurer of the offending vehicle, then the Motor Accident Claims Tribunal retains the power in itself to implead such persons to the said proceedings.

19. In that light, I would have to refer the judgment relied upon by Mr.S.Somasundar in ***United India Insurance Co., Ltd., Kadapa vs. Vedula Ravi @ Ravindra and Others, 2007 SCC Online AP 732***. The High Court had to deal with an issue of impleading the owner and an insurer of an offending vehicle, which caused an accident. That came to be rejected, against which a revision was preferred before the Andhra Pradesh High Court. The court held that Order I Rule 10 of the Code of Civil Procedure is applicable to the Tribunal in order to decide the real dispute in the OP in the presence of all those interested in the dispute. Therefore, while the power under Order I Rule 10 is available with the Motor Accident Claims Tribunal, the Tribunal cannot decide the matters alien to the Motor Vehicles Act. This is because, the Tribunal is not



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a Civil Court for fixing the tortious liability on all persons, but it is a special Tribunal created for the purpose of deciding the matters which arise out of Motor Vehicle Accident or involving Motor vehicle.

20. A careful perusal of the facts of the case in ***Union of India vs. Bhagwati Prasad and others, AIR 2002 SC 1301*** would show that the taxi in which the deceased was travelling collided with the train and this resulted in the death of all the passengers. The case of the claimants before the court was that the accident occurred due to the negligence of the railway staff at the level crossing as they kept the crossing open for the Highway traffic to pass over the rails when the train was coming forth. When the level crossing was opened, the taxi was crossing from one side to the other, which resulted in the train, that was crossing the point at the time, to collide with the taxi. Indian Railways represented by Union of India argued that it is not a necessary party to the proceedings, since it is not covered under the Motor Vehicles Act. The Supreme Court in paragraph 3 pointed out that the jurisdiction of the Tribunal to entertain an application for claim of compensation in respect of an accident arising out of the use of the motor vehicle depends essentially on the fact whether there had been any use of motor vehicle. Once that factum is



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established, the Tribunal's jurisdiction cannot be ousted on the finding arrived at a later point of time, that it is the negligence of the other tortfeasor and not the negligence of the motor vehicle in question that lead to the accident. In other words, the Supreme Court had very clearly and categorically held that the accident must be to a motor vehicle caused by other vehicle and that other vehicle being a train or taxi does not a matter. Therefore, the Court allowed the impleading of the Indian Railways, since it was a joint tortfeasor in the accident that had occurred.

21. Similar is the view that was taken by the Karnataka High Court in ***Anitha and Others vs. Bangalore Water Supply and Sewarage Board and Another, 2008 2 SCC Online Kar 846***. A perusal of the said judgment would show that the accident itself had occurred on account of the deceased, who was riding a Kinetic Honda Scooter and he did not notice the manhole in the middle of the road as it was left unguarded. The vehicle fell into the said manhole and he was thrown on to the road. He sustained fatal injury in his head and other parts of the body. The specific case of the claimant was that the accident occurred on account of the manhole being kept open by the Bangalore Water Supply and Sewerage Board and Bangalore Mahanagara Palike. The Court held



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that the claim for compensation on account of the accident arising out of the use of the motor vehicle can be filed before the Tribunal not only against the owner or the insurer of the motor vehicle, but also against a tortfeasor connected with the accident or against whom the composite negligence is alleged.

22. In view of the above, the verdicts relied upon by Mr.M.Somasundar would show that the claimants themselves had alleged negligence on the part of the Railway Administration in the first case and Bangalore Mahanagara Palike in the second case.

23. Quite contrary to these facts, a perusal of the claim petition would show that the specific plea of the claimant is that the vehicle of the first respondent had been driven in a rash and negligent manner with great speed and it had hit the motor cycle causing the accident. The plea of the unguarded potholes, as found by the learned Trial Judge, was projected for the first time in the additional counter that was filed by the second respondent/Insurance Company. It is the case which has been projected by the second respondent that the accident occurred due to the potholes. It is not the case of the claimants that the accident occurred due to the existence of the potholes.



WEB COP 24. Furthermore, here is the case where the bus that was driven by the first respondent's driver did not come in the opposite direction and run over the deceased. The bus was running ahead of the bus. If the bus driver had driven with caution then the situation of running over the deceased would not have arisen. It is only on account of the bus being driven in a rash and negligent manner as alleged by the claimants that the accident had occurred.

25. I should remember that in a proceeding under Order 1 Rule 10, the claimant is the *Dominus Litis*. If I were to implead the State Highways and National Highways as parties to the litigation, then I would be calling upon the claimants to prove a case which had not been pleaded by them. It is the clear and categorical case of the claimants that the accident occurred only due to the rash and negligent manner in which the offending vehicle belonging to the first respondent had been driven. They nowhere pleaded about the existence of the potholes.

26. A party cannot be impleaded on the basis of the pleadings of the respondent. It is always open to the respondent to disprove the case of the



claimant and let in such evidence as may be necessary before the court. To implead a party on account of the defence taken by the defendant to deny the claim of the plaintiff, in my opinion, would not be justified. That would be throwing an additional burden on the claimant which was never in the contemplation when they presented the claim petition.

27. At this stage, Mr.M.Somasundar would plead that the FIR has to be read as a whole and to that effect, he would rely upon the judgment in ***Oriental Insurance Co. Ltd., vs. Premalata Shukla and Others, (2007) 2 TNMAC 106 (SC)***. A perusal of the said judgment would show that Mr.M.Somasundar is correct in the plea that the FIR has to be read as a whole and it cannot be read accepting a part of the contents while rejecting the remaining. That was a case wherein the FIR that had been presented on the death of one Sivanandha Prasad Shukla, it was specifically pleaded that the registration number of the offending truck was not known. The investigation which was launched subsequently also came to the conclusion that the offending truck could not be traced. The claim petition which was filed against the driver, owner and the insurance company of the vehicle in which the deceased was travelling came to be dismissed on the ground that the claimant had not proved that the accident had occurred due to



the rash and negligent act of the vehicle in which he was travelling.

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28. This dismissal was reversed by the High Court relying upon the FIR filed in that matter. The Supreme Court came to the conclusion that the entire FIR has to be read and one part cannot be accepted rejecting the other part. A proof of rashness and negligence on the part of the driver of the vehicle is *sine qua non* to fix the liability and since that aspect had not been proved as against the vehicle in which the deceased was travelling, the Supreme Court reversed the verdict of the High Court.

29. In the facts of the present case, if the FIR is read as a whole, it is clear that the first informant had specifically pleaded that though the deceased fell off the vehicle after hitting the pothole, he suffered injuries on account of the fact that the vehicle belonging to the first respondent, which was being driven in a rash and negligent manner, ran over him. On a reading of the FIR as a whole, as held in ***Oriental Insurance Co. Ltd., vs. Premlata Shukla and Others, (2007) 2 TNMAC 106 (SC)***, I am able to come to the conclusion that the accident occurred on account of the rash and negligent manner in which the offending vehicle was driven.



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30. As rightly pointed by the Tribunal, if the deceased Harish had died on account of the fact that he fell down on the ground after the vehicle hit a pothole, they could not have maintained a petition before the Motor Accident Claims Tribunal, but their remedy would have been only before the Civil Court.

31. The civil revision petitioner/insurance company can plead that there was no fault on part of the driver and on that ground, they can escape from the liability. For the said purpose, the presence of the State Highways Department or National Highways Authority is totally unnecessary.

32. In the light of the above discussion, I do not find any reason to interfere with the order of the learned Motor Accident Claims Tribunal – I, (Special District Court for MCOP No.1), Tiruvallur. Accordingly, these civil revision petitions stand dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Index : yes / no



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Neutral Citation : yes / no  
Speaking / Non Speaking Order

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To

1.The Motor Accident Claims Tribunal – I, (Special District Court for MCOP  
No.1), Tiruvallur



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V.LAKSHMINARAYANAN, J.

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