

MACC 02 of 2021 CIS 03 of 2021
CNR WBSP04-000025-2021
J.O Code :- WB00993

Order no.23 dated 27-06-2024

Both sides file respective hazira.

Today is fixed for passing order in respect of the hearing conducted on the last occasion, with regard to the petition filed by O.P.No.2/Insurance Company under order 1 rule 10 CPC on 05-12-2022.

Record is taken up for passing order.

Ld advocate for the petitioner/Insurance Company filed a petition u/o 1 rule 10 CPC for the purpose of including another party as O.P. It is the case of the Insurance Company, being O.P No.2 that the alleged accident had taken place between two vehicles. In this MAC case, the claimant has impleaded the insurance company of the offending truck bearing Registration No.OR-09K/4995. The claimant being the legal representative of the deceased driver of the vehicle bearing no.WB-04G/7786, has not impleaded the insurance company of this vehicle as an O.P.

Ld advocate for the petitioner emphasized that the alleged accident had taken place between the two vehicles due to contributory negligence of both the vehicles. For that reason, compensation if any, should be paid by both the insurance companies. It is submitted that for such reasons, the insurance company of the other vehicle, the driver of which died as a result of the accident, should be impleaded as a party.

For the purpose of showing prima facie contributory negligence on the part of both the vehicles, Ld advocate drew attention of this court to certain documents. One is the certified copy of FIR that was lodged in respect of the alleged accident. In Sl No.12 of the FIR where there is a brief description of the incident, it has been mentioned that on 10-10-2020 accident took place between a truck and a car and as a result of the accident, the driver of the car died. In the last line it is mentioned that both the vehicles were negligent in driving due to which the accident occurred.

Ld advocate then pointed out to the charge sheet/final form report. He emphasized that in point no.12 where particulars of the accused persons not charge sheeted is given, in sub clause no.XII it is mentioned as “ **accused dead** “.

Ld advocate for the petitioner submitted that from these two documents a prima facie inference can be drawn that both the vehicles were being driven negligently and the accident was a result of contributory negligence.

Ld advocate in this respect referred to a decision of the Andhra Pradesh High Court reported in 2008 (1) T.A.C. 74 (A.P) where the Hon’ble Court allowed the application u/o 1 rule 10 C.P.C. in a claim case for the purpose of impleadment of owner or Insurer of the other vehicle also involved in the alleged accident. Another decision of the Bombay High Court reported in 2007 (3) T.A.C. 719 (Bombay) has also been cited. In this case the application u/o 1 rule 10 C.P.C for impleading the driver and insurance company of the other offending vehicle was also allowed.

Ld advocate for the petitioner/ Insurance Company/O.P.No.2 submits that for the purpose of doing substantial justice, the insurance companies of both the vehicles should be made parties as the compensation should be proportionately paid by both insurance companies. But in this case only the insurance company of the offending truck has been impleaded and compensation has been claimed from the insurer of the truck. This is not proper as both the insurers are liable to pay compensation.

Ld advocate accordingly prayed for allowing the petition u/o 1 rule 10 C.P.C. so that the insurer of the car can be now be made a party to this proceeding.

Ld advocate for the claimant raised severe objection.

It is submitted on behalf of the claimant that in case of road traffic accident, even if it is found that there is any kind of contributory negligence on the part of the vehicle in which the victim was travelling, the claimant is not bound to implead the Insurance company of the said vehicle. It is solely the discretion of the claimant for the purpose of deciding as to whether he shall make any claim or not, for compensation, from the insurance company with which the vehicle in which the victim was travelling, was insured.

In this respect Ld advocate referred to the decision of the Hon'ble Apex Court reported in 2015(2) T.A.C. 677 (SC). Ld advocate emphasized upon point no.18. In the said decision in para 18, the concluding part is reproduced here for reference.

“What emerges from the aforesaid discussion is as follows:

I) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort – feasons and to recover the entire compensation as liability of joint tort-feasons is joint and several.

II) In case of composite negligence, apportionment of compensation between two tort-feasons vis-a-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

III) In case all the joint tort-feasons have been impleaded and evidence is sufficient, it is open to the court/ tribunal to determine interse extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort-feasons is only for the purpose of their inter-se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/tribunal, in main case one joint tort-feasons can recover the amount from the other in the execution proceeding.

IV) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the driver of the two vehicles in the absence of impleadment of other joint tort-feasons. In such a case, impleaded joint tort-feasons should be left, in case he so desires, to sue the other joint tort-feasons in independent proceedings after passing of the decree or award.

Ld advocate for the claimant now submits that the Hon'ble Apex Court has clearly dealt with this issue and the matter is resolved by this decision of the Hon'ble Apex Court. Ld advocate accordingly prayed for rejecting the petition filed by O.P.No.2/Insurance Company u/o 1 rule 10 C.P.C praying for impleading the insurance company of the other vehicle (victim).

I have considered the entire situation. It must be said here that this matter has been elaborately dealt with by the Hon'ble Apex Court in the decision referred above. In view of the said decision, it is the discretion of the claimant to implead insurance company of both the vehicles or of one vehicle only. Even if the incident appears to be a result of contributory

negligence, the claimant is at liberty to file the case against either of the two insurance companies as liability here is joint and several.

Therefore, in view of the entire discussion done above, the decision cited above is hereby considered to be appropriate in respect of the present circumstances.

For the reason discussed above, I do not find any merit in the prayer of O.P.NO.2/Insurance Company.

Accordingly, the petition filed on 06-04-2023 U/O 1 Rule 10 CPC by O.P.No.2/ Magma HDI General Insurance Co Ltd., is on contest rejected.

Fix 19-08-2024 for taking evidence.

D/C by me.

Addl. Dist Judge,

F.T.C.-VIII, Alipore.

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