
(2012) 03 DEL CK 0153
In the Delhi High Court
Case No : CM (M) 263 of 2012

IFFCO Tokio General Insurance Company Ltd.

APPELLANT

Vs

Smt. Shimlesh and Others

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151
Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 03 DEL CK 0153

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Suman Bagga, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mittal, J.

C.M.APPL.3956/2012

Exemption allowed subject to all just exceptions.

Application stands disposed of

CM (M) 263/2012

1. The Petitioner IFFCO Tokio General Insurance Company Ltd. impugns the order dated 15.10.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby an application under Order 1 Rule 10 read with Section 151 CPC for impleading driver, owner and Insurer of the bus No. DL-1PA-2904 (the bus) was dismissed. In the application, the Petitioner took the plea that the accident was caused on account of rash and negligent driving of the bus and dumper bearing No. UP-04D-8568 (the dumper); the first Respondent, however filed the Claim Petition only against the driver, owner and Insurer of the dumper and did not implead the driver, owner and Insurer of the bus. It was stated that since the bus was also involved in the accident, its driver, owner and Insurer

were equally liable to pay the compensation.

2. Respondents No. 1 to 7 contested the application and stated that the accident was caused because of the negligence on the part of the driver of the dumper. Since the driver of the bus was not negligent, its driver, owner and Insurer were not impleaded.

3. The Claims Tribunal by impugned order while relying on judgment of this Court in *Om Wati and Others Vs. Mohd. Din and Others*, and *Surendrabhai Chunilal Sheth (Decd.) through heirs Mehulbhai and Others Vs. Oriental Insurance Co. Ltd. and Others*, held that in case of composite negligence, the Claimants should include the owner, driver and Insurer of both the vehicles or any one of them. It was observed that there cannot be apportionment of liability of the joint tortfeasor.

4. Learned Counsel for the Petitioner places reliance on a judgment of the Supreme Court in *Machindranath Kernath Kasar Vs. D.S. Mylarappa and Others*, . The authority cited is not attracted to the facts of the present case. In *Machindranath Kernath Kasar (supra)* the question was not of involvement of two vehicles in the accident. The Supreme Court observed that the driver and owner of the offending vehicle are not joint tortfeasor in the strict sense of the term. It was further held that although the driver is not a necessary party but is a proper party as question of negligence is to be determined in a petition u/s 166 of the Motor Vehicles Act (the Act). In *Machindranath Kernath Kasar (Supra)* the question of composite negligence was not under consideration. A reference may be made to the report of the Supreme Court in *T.O. Anthony Vs. Karvarnan and Others*, , where it was held as under: -

6. "Composite negligence" refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

5. In *T.O. Anthony (Supra)* it was held that in case of composite negligence each wrong doer is jointly and severally liable to the Insured for payment of the entire

damage and the injured has the choice to proceeding against all or any of them. Thus, although the Respondents (Claimants) dispute that there was any negligence on the part of bus driver, even if it is there the Appellant cannot compel the Respondents (Claimants) to sue the other tortfeasor with the driver, owner and Insurer of the dumper.

6. In my view, there is no illegality in the impugned order. The petition is devoid of any merit. The same is accordingly dismissed.