(2011) 03 SHI CK 0098

In the High Court Of Himachal Pradesh

Case No : CMPMO No. 437 of 2010

The IFFCO Tokio General Insurance Company APPELLANT

Vs

Dhani Devi and Others RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 7 Rule 11, 151

Citation : (2011) 03 SHI CK 0098

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—This petition is directed against the order dated 16.9.2010 passed by the learned Motor Accident Claims Tribunal (Fast Track Court), Chamba whereby he rejected the application filed by the applicant- Petitioner under Order 7 Rule 11(d) read with Section 151, Code of Civil Procedure.

2. According to the Petitioner-Insurance Company, the Claim Petition itself was not maintainable since the claimant himself was driving the vehicle at the time of the accident. On the other hand, the claimants submitted that Rs. 250/- had been paid extra as premium and there was coverage of Rs. 1 lac each for five persons. The learned Motor Accident Claims Tribunal rejected the application. Hence the present petition.

3. I am constrained to observe that the learned MACT has totally misdirected himself in passing the order. In fact, an application under Order 7 Rule 11(d), CPC was not maintainable. The principles of the CPC may apply to trials before the Motor Accident Claims Tribunal but the specific provisions of the Code do not apply unless specifically made applicable. This Court in Miss Lata v. United India Insurance Company Ltd. and Ors. Cross-objection No. 39 of 1996 in FAO No. 267 of 1993 held that even Cross Objections are not maintainable because Order 41 Rule 22, CPC had not been made specifically applicable to these proceedings. It was thereafter that the H.P Motor Vehicles Rules were amended by the State of Himachal Pradesh and Order 41 Rule 22 was specifically made applicable.

4. As far as Order 7 Rule 11(d), CPC is concerned, this has not been made applicable to these proceedings. Therefore, the application itself was not maintainable and should have been rejected on this ground without going into the merits of the case as to whether the Insurance Company is liable to pay any amount or not. It is clarified that any observation made by the learned Motor Accident Claims Tribunal with regard to the liability of the Insurance Company shall not bind it while deciding the case finally.

The petition is disposed of in the aforesaid terms. No order as to costs.