
(2012) 10 RAJ CK 0063

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3666-86 of 2012

United India Insurance Co. Ltd.

APPELLANT

Vs

MACT, Jaipur and Others

RESPONDENT

Date of Decision : 26-10-2012

Acts Referred:

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

Citation : (2012) 4 WLN 388

Hon'ble Judges : Raghuvendra S. Rathore, J

Bench : Single Bench

Advocate : Rizwan Ahmed, for the Appellant;

Judgement

Raghuvendra S. Rathore, J.—In all these writ petitions, same issue is involved and as such they are being decided by this common order. These writ petitions have been filed by the United India Insurance Company Limited, challenging the order passed by the learned Motor Accident Claims Tribunal, Jaipur District, Jaipur on 09.11.2011, whereby the application filed by it under Order 1 Rule 10 CPC for impleadment of owner, driver and Insurance Company of Jeep No. RJ 14 TA 9731 as party respondents to the claim petitions, had been rejected. The claim petitions had been filed before the learned Tribunal by different claimants in respect of an accident which had taken place on 07.06.2011. It was with regard to the accident that a First Information Report (101/2011) was lodged by Rajendra Singh son of Mohan Singh stating that he along with about 30 family members including women and children were going to Baneshwar Mata Mandir, Chittorgarh in Jeep Nos. RJ 14 TA 6765 and RJ 14 TA 9731. The Jeep (9731) was being driven by his brother Dheer Singh. While they were on the high-way, a Tractor (No. RJ 09 GA 3271) which was going ahead of them, suddenly applied breaks. Resultantly, Jeep (9731) which was coming from behind, collided with the Tractor. In the said accident, 10 persons died and 11 persons got injured. All the said persons were the occupants of Jeep No. RJ 14 TA 9731.

After registration of the report, the investigation commenced and on conclusion of the same, the police submitted a charge-sheet against the driver of the trailer for being negligent in driving.

2. The claimants had then submitted petitions under Sec. 166 of the Motor Vehicles Act, 1988 against the owner, driver and the Insurance Company of the trailer (3271). It was alleged in the claim petitions that the accident had taken place owing to the negligent driving by the driver of the trailer.

3. Subsequently and during the pendency of the claim petition, an application under Order 1 Rule 10 CPC came to be filed by the non-claimant, insurance company, before the learned tribunal. Such applications were filed in all the 21 petitions which were pending before the learned tribunal for award of compensation, either on account of death or for injuries sustained by the occupant-claimants in the Jeep. It was stated in the application that there was negligence on the part of the driver of the Jeep no. RJ 14 TA 9731 which is evident from the fact that the Jeep had dashed into the Trailer (3271), from the rear side, when it was on a high speed. Further, it was stated that an opportunity to avoid the accident was available only with the driver of the Jeep. As the impact of the accident was grave, 10 persons died and 11 persons got injured who were the occupants of the Jeep. The damage caused to the vehicle indicates that the Jeep was running at a very high speed and was over loaded.

It was also averred in the application that mere submission of challan against the driver of the Trailer is not sufficient to hold that the driver was guilty for the offences at this stage as it is not the conclusive evidence. It was not reflected from the challan as to why the driver of the Trailer had applied breaks suddenly. The owner, driver and the Insurance Company of the Jeep (9731), being necessary parties to the claim petition, had not been so impleaded and in absence of it, the claim petition suffers from the infirmity of non-joinder of necessary parties. Therefore, the prayer for impleadment of owner, driver and the Insurance Company of the Jeep was made before the learned tribunal.

4. The application submitted by the non-claimant petitioner was rejected by the learned tribunal by its order dt. 09.11.2011 and it had held that the claimants can claim compensation from any of the tort-feasor. Further, it had held that although it appears from the petition that the Jeep was overloaded but no document in this regard was placed on record. Such an issue can be decided only after recording of evidence, Being aggrieved of the order dt. 09.11.2011 passed by the tribunal, the non-claimant petitioner had filed the present writ petitions.

5. Learned counsel for the petitioner, after reiterating the averments made in the writ petition, submitted that the learned tribunal had grossly erred in passing the impugned order on 09.11.2011 and in dismissing the application filed for impleadment of the driver, owner and the Insurance Company of the Jeep No. RJ 14 TA 9731. Further, he has submitted that all these persons were the necessary parties to the claim petition and in absence of it, the petition before the tribunal

suffers from non-joinder of necessary parties. He has also submitted that the very fact that the Jeep had collided on the rear side of the trailer and the damage caused to it goes to show that at the time of accident, it was running at a very high speed. This clearly reflects that the driver of the Jeep (9731) was negligent. In such a situation, it was imperative for the learned tribunal to have impleaded the driver, owner and Insurance Company of the Jeep as party respondents to the claim petition. Therefore, it has been prayed that the impugned order dt. 09.11.2011 be set aside and the application filed by the petitioner under Order 1 Rule 10 CPC, before the learned tribunal, be allowed.

6. After taking into consideration the over all facts and circumstances of the case, it is clearly revealed that the accident had taken place on 07.06.2011 and the Jeep collided with the Trailer resulting in death of 10 persons and injuries to 11 persons, the occupants of it. The claim petition filed by the claimants for compensation either on account of death or injuries had preferred to implead the owner, driver and Insurance Company of the Trailer No. RJ 09 GA 3271 as party non-claimant before the learned Tribunal. They had come with the specific case that the driver of the Trailer was negligent as he had suddenly applied breaks on the high way and the Jeep in which the occupant-claimants were travelling, had collided with the Trailer because it had no time to stop or avoid the collision. There was no opportunity for the driver of the Jeep to avoid the accident and as such the case of the claimants was that the accident had resulted because of the driver of the Trailer, There was no negligence on the part of the driver of the Jeep and, therefore, the owner, driver and the Insurance Company were not the necessary parties. Accordingly, they were not made party non-claimants in the petitions filed before the learned tribunal. Even otherwise, it is a settled principle of law that the plaintiff or the claimant or the person who approaches the Court of law has a right to select the opposite party in the plaint/petition which is filed before the trial Court. In other words, it is the domain of the plaintiff to select the defendant/non-claimant in the proceedings before the Court of law which is initiated by him. In case, on adjudication of the matter, if it is found that the suit/claim suffers from non-joinder of necessary party, then the law would take its course and the consequence thereof will have to be met out by the person who had approached the Court.

7. More over, in the instant case, the non-claimant petitioner had, on its own, filed an application under Order 1 Rule 10 CPC for impleadment of the owner, driver and the Insurance Company of the Jeep for impleading them as party non-applicant in the claim petition. The said application was filed before the tribunal at the initial stage of the proceedings. In other words, the non-claimant petitioner had assumed since the very beginning of the proceedings and tried to build up a case that the driver of the Jeep was negligent, without any evidence having been brought on record before the learned tribunal. It had not only tried to implead other persons as party non-claimants but also to turn the nature of the claim filed by the claimants that the driver of the jeep, if not solely responsible, was equally responsible for the accident as the driver of the trailer.

This would make out a case, without leading of evidence by the parties, of composite negligence of the driver of the two vehicles which was never the case of the claimants before the tribunal. The claimants had come out with a clear case that it was the driver of the trailer alone who was negligent and responsible for the accident and as such the owner, driver and the Insurance Company of the Trailer are alone liable for payment of compensation.

8. We may now come to the relevant principles of law as enuntiated by the Hon"ble Supreme Court and the High Court in respect of the issue involved herein by referring to some of the case laws.

9. In the case of Manjula Devi Bhuta and Another Vs. Manjusri Saha and Others, it had been observed by the Court as under:

Where a person is injured without any negligence on his part but as combined effect of the negligence of two other persons, it is not a case of contributory negligence but is a case of what is styled as "composite negligence". If due to the negligence of "A" and "B", "Z" has been injured, "Z" can sue both A and B for the whole damage. There is a clear distinction between contributory negligence and what is termed as "composite negligence". The term "contributory negligence" applies solely to conduct of a plaintiff. It means that there has been an act of omission on his part, which has materially contributed to the damage.

...but in a case where there has been no contributory negligence on the part of the victim., the question of apportionment does not arise. Where a person is injured without any negligence on his part but as a result of the combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is case of what has been styled by Pollock as injury by composite negligence.

10. The renowned author Justice G.P. Singh, had in his Law of Torts, 22nd Edition, 1992, made following observations:

In a suit for "composite negligence" the plaintiff is not bound to a strict analysis of the proximate or immediate cause of the event to find out whom he can sue. Subject to the rules as to negligent persons and it is no concern of his whether there is any duty of contribution or indemnity as between those persons, though in any case he cannot recover on the whole more than his while damage. He has a right to recover the full amount of damages from any of the defendants.

...Those who are sued cannot insist on having the others joined as defendants. The mere omission to sue some of them will not disentitle the plaintiff from claiming full relief against those who are sued.

The aforesaid principle of law also has been reiterated by the Hon"ble Supreme Court in the case of Gujarat State Road Transport Corporation vs. Shardabai and Others, 1997 ACJ 649.

11. This High Court has also followed the principle in substance in the case of *Said Peer Asraf Shah Jilani vs. Indra Jeet*, 2005(10) RDD 4556 (Raj.), that the claimants had a right to proceed against either of the tortfeasor and, therefore, non-impleadment of owner of the Tata Sumo could not amount to reduction in the amount of claim.

12. In para 9 of the said judgment, the High Court had laid down as under:

In view of the aforesaid position of law, it appears to be well settled that qua the passengers of the vehicle, who have not actively contributed in any manner to the said accident and when the other vehicles namely the Truck is comprehensively insured, which fact is not in dispute, then the said Insurance Company is responsible to make good the entire amount awarded by the Tribunal qua those claimants because those claimants had right to proceed against any one of the tortfeasors.

13. Therefore, since the claimants are to proceed against either of the tortfeasors, there is no justification for impleading other persons connected with the vehicle (Jeep) as party non-claimants in the present proceedings.

14. Later on, in the case of *Rajasthan State Road Transport Corporation vs. Omprakash and Another*, 2009 RAR 223 (Raj.), another bench of the High Court had held in para 6 that:

It is indeed, settled principle of law that the claimant can sue either of the tortfeasors and need not sue both of them simultaneously. The law gives an option to the claimant-respondent an option well exercised by him.

Similarly, in the case of *Smt. Antima and Others Vs. Kumbha Ram and Others*, a co-ordinate bench of this Court, while considering a matter where the quantum of compensation was reduced because of one of the tortfeasors was not a party, held that:

in view of above legal position, since the claimants to proceed against either of the tortfeasor there was no justification for reducing the quantum of compensation by 40%....

15. For the aforesaid reasons, it is amply clear that in view of the settled principle of law that where a person is injured without any negligence on his part but has a combined effect of the negligence of two other persons, it is a case of composite negligence. Further, in a proceeding for claim even if based on composite negligence, the plaintiff/claimant is not bound to a strict analysis of the cause of the event to find out as to whom he can sue. He is entitled to sue by or any of the negligent persons and he is not to find out as to whether there is any duty of contribution or indemnity as between those persons. He has a right to sue any of them because he can recover the full amount of damages either of the defendants. Therefore, those persons who are sued are not to insist on having the others joined as defendants. The reason being simple that because of omission to sue some person, the plaintiff will not be dis-entitled from claiming

the full relief against those who have been sued.

Hence, in the considered opinion of this Court, the learned tribunal has not committed any illegality or grave irregularity while passing the impugned order and no interference is called for by this Court as the same is in accordance to law. The impugned order deserves to be affirmed by this Court.

Consequently, these writ petitions filed against the order dt. 09.11.2011 passed by the learned claims tribunal, Jaipur district Jaipur, are dismissed as being devoid of merits.