

(2014) 11 AHC CK 0114
In the Allahabad High Court
Case No : Civil Revision No. 61 of 2014

United India Insurance Company Ltd.	APPELLANT
Vs	
Meera Diwedi	RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 115, 151
Motor Vehicles Act, 1988 — Section 165, 166

Citation : (2014) 10 ADJ 645 : (2015) 1 ALJ 530 : (2015) 108 ALR 793

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Anil Kumar Srivastava, Advocates for the Appellant; Vimal Kishor Singh, Advocates for the Respondent

Judgement

Anil Kumar, J.—Facts in brief of the present case are that the claimants/respondents (Smt. Meera Diwedi, Ashish Diwedi and Km. Aakansha Diwedi) filed a Claim Petition No. 264 of 2007 under Section 166 of the Motor Vehicle Act, 1988 on the ground that on 12.3.2007 at 10:30 A.M., Rajendra Prasad who was travelling on a Maruti Van No. UP 32 AP 5319 died due to rash and negligent driving of tractor having registered No. UP 44 F-2537 at Khataura, near Jaishwal Hotel, P.S. kamrauli, District-Sultanpur. Shri Sambhu Singh (owner of the vehicle) and New India Insurance Co. has been impleaded as respondents. On 28.3.2008, Insurance Co. Ltd. filed a written statement. Thereafter, an application has been (paper No. 15) by the Insurance Co. with a prayer that a direction be issued to the claimants in order to implead the owner of the Maruti Van as a party, rejected/dismissed for want of prosecution by order dated 23.7.2009.

Again, on 1.10.2009, revisionist moved an application with the prayer that for proper adjudication of claim and in the interest of justice the claimant be directed to make owner and insurer of the Maruti Van No. UP32 AP 5319 as a party in the claim petition so as to meet the end of justice.

2. By order dated 5.7.2010 passed by Motor Accident Claims Tribunal rejected the same quoted herein below :

"Case Called out. Learned counsel for the petitioner and opposite party No. 2 are present. 18C is application by the opposite party No. 2 for issuing directions to petitioner to add owner of the Maruti Van as a party. Perused the record.

It is option of the claimants from whom they claim the compensation. Claimants cannot be guided and forced for where they have to claim the compensation. 18 C application is not maintainable. Hence rejected. Put up for F.H."

3. Further, on 10.4.2014, the revisionist/United New India Insurance Co. Ltd. once again moved an application for direction to implead the owner and insurer of Maruti Van in claim petition, the prayer made with this said application reads as under:

"according to rules for proper adjudication of claim and in the interest of justice the claimants be directed to make party to the owner and insurer of Maruti Van bearing No. UP 32 AP 5319 in claim, who are solely responsible and liable for accident, so as to meet the end of justice."

By order dated 10.4.2014, the Motor Accident Claims Tribunal had rejected the said application. The relevant portion quoted herein below :

In view of the above said factual background, the present revision under Section 115 CPC has been filed challenging the orders dated 5.7.2010 and 10.4.2014.

4. Shri Anil Kumar Srivastava, learned counsel for the revisionist while challenging the impugned orders submits that in the interest of justice for "levelling the playing field", the orders in question be set aside and the claimants/respondents be directed to implead the owner and insurer of the said Maruti Van. In support of his argument, he has placed reliance on the judgment given by Hon"ble the Apex Court in the case of The Oriental Insurance Company Limited Vs. Meena Variyal and Others, , wherein paragraph Nos. 10 and 11 quoted herein below :

"Before we proceed to consider the main aspect arising for decision in this Appeal, we would like to make certain general observations. It may be true that the Motor Vehicles Act, insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation. Ordinarily, a contract of insurance is a contract of indemnity. When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this

vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves under Section 166 of the Motor Vehicles Act, that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. Therefore, under general principles, one would expect the driver to be impleaded before an adjudication is claimed under Section 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver. Why should not a Tribunal insist on the driver of the vehicle being impleaded when a claim is being filed?

As we have noticed, the relevant provisions of the Act are not intended to jettison all principles of law relating to a claim for compensation which is still based on a tortious liability. The Tribunal ought to have, in the case on hand, directed the claimant to implead Mahmood Hasan who was allegedly driving the vehicle at the time of the accident. Here, there was also controversy whether it was Mahmood Hasan who was driving the vehicle or it was the deceased himself. Surely, such a question could have been decided only in the presence of Mahmood Hasan who would have been principally liable for any compensation that might be decreed in case he was driving the vehicle. Secondly, the deceased was employed in a limited company. It was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should not any Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer Company? Is there anything in the Motor Vehicles Act which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the Motor Vehicles Act vis-?-vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable. The Tribunal, in this case, has chosen to merely go by the oral evidence of the widow when without any difficulty the claimants could have got the employer 026 company to produce the relevant documents to show the income that was being derived by the deceased from his employment. Of course, in this case, the above two aspects become relevant only if we find the insurance company liable. If we find that only the owner of the vehicle, the employer of the deceased was liable, there will be no occasion to further consider these aspects since the owner has acquiesced in the award passed by the Tribunal against it."

5. Learned counsel appearing on behalf of the claimants/respondents submits that once application moved by the revisionist to implead the owner and insurer of the said Maruti Van has been rejected by order dated 10.4.2014. The second application moved by the revisionist on the same ground and prays to implead the owner and insurer of the said Maruti Van is not maintainable, rightly rejected

by the Tribunal with the observation that the same is not maintainable as once the application dated 5.7.2010 has been rejected on merit, as such no interference is required by this Court in the orders under challenged in the present case.

6. Another argument raised by learned counsel appearing on behalf of the claimants/respondents that it is prerogative of the claimants to implead the party in the claim petition, So the revisionist has got no right or locus to move an application for a direction to the claimants to implead the owner and insurer of the Maruti Van. Hence, there is no illegality or infirmity in the impugned orders passed by the Tribunals.

7. I have heard learned counsel for parties and gone through the records.

In order to get compensation under Motor Vehicle Act, claimant has to move an application under Section 166 of the Act. The relevant portion of the said section reads as under :

"An application for compensation arising out Of an accident of the nature specified in sub-section (1) of Section 165 may be made :

(a) by the person who has sustained the injuror; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the Case may be -

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application."

From the perusal of the claim petition filed by the claimant, the position which emerges out is that the entire facts in respect of the incident which has been occurred on 12.3.2007 in which Shri Rajendra Pd. has died due to rash and negligent driving of Tractor having registered No. UP 44 F-2537 and impleaded the owner as well as insurer of the tractor as defendant/respondent.

8. During the pendency of the claim petition, an applicant has been moved by the revisionist in order to bring the owner and insurer of the Maruti Van, rejected by order dated 5.7.2010. Thereafter, another application has been moved for the said purpose, rejected by order dated 10.4.2014 with a finding that once application in respect of the said relief/fact has been rejected by order dated 5.7.2010, then the second application is not maintainable. The said order passed by the Tribunal is perfectly valid, rather in accordance with law as laid down by

Hon"ble the Apex Court in the case of Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another, , relevant portion (paragraph Nos. 7 and 8) quoted herein below :

"The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter-whether on a question of fact or a question of law-has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher Court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future sit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by Courts for the purpose of achieving finality in litigation. The result of this is that the original Court as well as any higher Court must in any future litigation proceed on the basis that the previous decision was correct.

The principle of res judicata applies also as between two stages in the same litigation to this extent that a Court, whether the trial Court or a higher Court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this however mean that because at an earlier stage of the litigation a Court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher Court cannot at a later stage of the same litigation consider the matter again?"

9. Further, it is settled proposition of law that normally the Court should not add a person as defendant when the plaintiff is opposed to such addition. The reason is that the plaintiff is the dominus litis. He is the best judge of his own interest and it should be left to him to choose his opponent from whom he wants relief. If he seeks relief against a particular person, it is not the look out of the Court to see whether the relief should be claimed against other persons, nor is it the duty of the Court to investigate whether the necessary parties have been added or left out. (See Megharaj Agarwala and Others Vs. Radheshyam Agarwala, and G.D.F. Luis v. I.P.H. Fernandes, AIR 1977 Goa 4). However, it is open to the Court to implead a new party as a defendant even against the plaintiff's consent in a fit and proper case. For this purpose the test is not whether the joinder of a person proposed to be added as defendant would be according to or against the wishes of the plaintiff or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the plaintiff. The test is whether the relief claimed by the plaintiff will directly affect the intervenor in the enjoyment of his rights. Another useful test may be to see whether after his joinder the main evidence in the suit and the main enquiry will remain the same as before his coming in. So, keeping in view the said facts, the claimants cannot

be compelled to implead the owner and insurer of the said Maruti Van. So far as the judgment given by Hon"ble the Apex Court in the case of The Oriental Insurance Company Limited Vs. Meena Variyal and Others, , which has been cited by Shri Anil Kumar Srivastava, learned counsel for the revisionist is concerned, the same is not applicable in the facts and circumstances of the present case because in the said matter, on behalf of the Insurance Co., it is contended that the policy was only one in terms of the Motor Vehicle Act, 1988 and the policy did not cover the employee of the owner, the insured, who was driving the vehicle while attending to the business of the employer Company as the deceased was not a third party. Hence, the revisionist cannot take any advantage any benefit from the said judgment which is not applicable in the facts and circumstances of the present case.

For the foregoing reasons, I do not find any jurisdictional error in the impugned orders passed by the Tribunal, under challenged in the present revision under Section 151 CPC. Accordingly, the revision lacks merit and is dismissed.