

2019 PLRonline 3411

RAJASTHAN HIGH COURT

(Jaipur Bench)

Before:- Justice Sanjeev Prakash Sharma.

Cholamandalam Ms General Insurance Co. Ltd. v. Alka Jain

S.B. Civil Writ Petition Nos. 19274 and 19722 of 2017.

6.9.2019.

CPC Order 1 Rule 10 - MACT - Application for impleading the car owner and the Insurance company, of the other vehicle involved in the accident - It is for the MACT to ultimately take a decision in this regard - If the petitioners seek to lead any evidence to show a contributory negligence, it is necessary that the parties against whom contributory negligence alleged are heard and therefore it is necessary that they should be impleaded as party accordingly - Application for impleading the owner and insurance company of the car involved in the accident, would be allowed.

Cases Referred :-

1. ***Khenyei v. New India Assurance Co. Ltd., (2015-3)129 PLR 314 (SC)***
2. *State of Haryana v. Manoj Kumar, AIR 2010 Supreme Court 1779*
3. ***United India Insurance Co. Ltd. v. Veduka Ravi, 2007 PLRonline 0103***

For the Petitioner:- Mr. Virendra Agarwal, Advocate. For the Respondents:- Mr. Nitesh Rawat, Advocate.

JUDGMENT AND ORDER

Mr. Sanjeev Prakash Sharma, J. - The petitioner-Insurance company has preferred these writ petitions assailing the order dated 04.09.2017 passed by the learned Motor Accident Claim Tribunal (MACT) whereby the MACT has rejected their applications under Order 1 Rule 10 CPC for impleading the car owner and the Insurance company, which had insured the car wherein the accident has occurred.

2. Learned counsel appearing for the petitioner submits that there is a letter issued by the National Highway Authorities, which states that there was certain negligence on the part of the car driver, therefore, it would be in the interest of justice that the car owner and the insurance company, which has insured the car wherein accident has occurred, be also impleaded as party.

3. Learned counsel relies upon the law laid down by the High Court of Andhra Pradesh at Hyderabad in the case of **United India Insurance Co. Ltd. v. Vedula Ravi, 2007 PLRonline 0103**, to submit that once, an application has been moved by the respondent-company, such power is available with the MACT to implead any parties whose presence is necessary to enable the Tribunal to effectively and completely adjudicate upon and settle all the disputes in the lis pending before it.

4. Per contra, learned counsel appearing for the claimant submits that the Apex Court in the case of **Khenyei v. New India Assurance Co. Ltd. and Ors. reported in (2015-3)129 PLR 314 (SC)** wherein it has been held that it is the claimant, who are required to implead both the or any one of the joint tortfeasors. Learned counsel also relied upon the judgment reported in **AIR 2010 Supreme Court 1779: State of Haryana and Ors. v. Manoj Kumar** to submit that supervisory jurisdiction of High Court under Article 227 of the Constitution of India is limited and to the only relate aspect authority or jurisdiction, it would be for the purpose of correcting mere errors of fact by examining the evidence and re-appreciating it.

5. I have heard the learned counsel for the parties.

6. As noticed above, this Court respectively agrees with the law laid down by the Apex Court as cited above. However, in both the cases, there is no such embargo. In both the cases as cited above, law has been laid down by the Supreme Court for not allowing the insurance company to move appropriate application under Order 1 Rule 10 CPC for impleading over joint tortfeasors. It is for the MACT to ultimately take a decision in this regard. If the petitioners seek to lead any evidence to show a contributory negligence, it is necessary that the parties against whom contributory negligence alleged are heard and therefore it is necessary that they should be impleaded as party accordingly. Counsel for the respondents submits that the owner had expired in the accident.

7. However, this would not deter this Court from passing an order the provisions of Order 22 Rule 4 CPC read with the Order 22 Rule 10 would have its own application. It would be for insurance company to implead the persons accordingly. The Court while also examining whether they are already parties before the Court as claimants or otherwise and while pass an order accordingly.

8. This Court finds that error has crept in the order passed by the MACT. The petitioner's application for impleading the owner and insurance company of the car involved in the accident, would be allowed. The amended cause title shall be filed accordingly before the MACT and notices shall be issued accordingly. The MACT is however directed to decide the claim petition of the claimants within a period of six months henceforth.

9. Thus, these writ petitions filed by the petitioner – insurance company deserve to be allowed subject to above observations.

10. All pending applications stand disposed of.