

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**1. CR No.7659 of 2015 (O&M)
Date of decision: 18.11.2015**

National Insurance Company Ltd.

...Petitioner

versus

Smt. Anita Aggarwal and others

...Respondents

**2. CR No.7682 of 2015 (O&M)
Date of decision: 18.11.2015**

National Insurance Company Ltd.

...Petitioner

versus

Smt. Satwinder Kaur and others

...Respondents

**3. CR No.7683 of 2015 (O&M)
Date of decision: 18.11.2015**

National Insurance Company Ltd.

...Petitioner

versus

Smt. Sharda Garg and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. L.M. Suri, Senior Advocate,
with Mr. Neeraj Khanna, Advocate,
for the petitioner(s).**

RITU BAHRI, J.

This order shall dispose of Civil Revision Nos.7659, 7682 and 7683 of 2015 together as common questions of law and facts are involved in all these petitions. For reference, facts are being taken from Civil Revision No.7659 of 2015.

Challenge in these petitions is to the order(s) dated 23.09.2015

passed by the Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal') in MACT Case No.304 of 2014, 294 of 2014 and 293 of 2014 respectively, whereby application(s) filed by respondent No.3-National Insurance Co. Ltd. (petitioner herein) under Order 1 rule 10 CPC for impleading the owner and insurer of Maruti Swift Vxi Ds car bearing Identification No. (VIN) No.MA3EHKD1S00711010, Engine No.1441784 and Chasis No.711010 as respondents, has been dismissed.

An accident had taken place on the crossing of light point of Sectors 45, 46, 49 and 50 when a bus bearing registration No.HP-63-5729 was going from Bus Stand, Chandigarh to Ambala on the double line road, in the meantime, a car came at a high speed from Mohali side and struck against the right side of the bus. Due to the impact, the bus was over turned and the car flown up. A number of persons died in the bus and the car. Thereafter, the claimants filed different claim petition(s) (Annexure P-1). The driver and owner of the offending bus were impleaded along with National Insurance Company (petitioner) with whom the said bus was insured. During the pendency of claim petitions, Insurance Company-petitioner filed application (s) under Order 1 Rule 10 CPC to implead the owner and insurance company of the car. Reply to the same was filed as Annexure P-5. The Tribunal dismissed the application(s) of the petitioner vide impugned order(s) dated 23.09.2015.

While dismissing application(s), reference was made to the judgment delivered by the Hon'ble Supreme Court in **T.O. Anthony Vs. Karvaranan and others**, 2008 (3) Punjab Law Reporter 462 (SC), wherein it has been held that it is the choice of the claimants to sue any of the vehicle, if two vehicles are involved in an accident. Similar views have been taken by

this Court in **Oriental Insurance Co. Ltd. Vs. Parveen Juneja and others,** 2002 (2) Punjab Law Reporter 644 and **Oriental Insurance Company Ltd. Vs. Monika Verma,** 2008 (3) Punjab Law Reporter 83.

Mr. Suri, learned senior counsel, has referred to a recent judgement passed by the Hon'ble Supreme Court in **Khenyei Vs. New India Assurance Co. Ltd. and others,** 2015 ACJ 1441, to contend that in a case of composite negligence to assess the apportionment of inter se liability, it was necessary to implead the owner and insurance company of the second vehicle.

In the aforesaid judgment, the Hon'ble Supreme Court has laid down the following guidelines:-

“18. xx xx xx

- (i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tort-feasors is joint and several.
- (ii) In the case of composite negligence, apportionment of compensation between two tort-feasors *vis-a-vis* the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.
- (iii) In case all the joint tort-feasors have been impleaded and evidence is sufficient, it is open to the court/Tribunal to determine *inter se* extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort-feasors is only for the purpose of their *inter se* liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. Incase both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/Tribunal in main case, one joint tortfeasor can recover the amount from the other in the execution proceedings.
- (iv) It would not be appropriate for the court/Tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a

case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tort feisor in independent proceedings after passing of the decree or award.”

As per clause (iv) above, in the absence of impleadment of other joint tort-feasor, the impleaded joint tort-feasor would be left to sue the other joint tort-feasor in independent proceedings after passing of the decree or award. The Hon'ble Supreme Court, in clause (i), has further observed that the claimant is entitled to sue both or any one of the joint tort-feasors. In case, there is no determination of *inter se* liability for want of evidence or other joint tort-feasor had not been impleaded, it would not open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law.

However, in the present case, since one of the tort-feasors has not been impleaded as party, petitioner can lead evidence which can enable the Tribunal to return a finding with regard to *inter se* liability. In case such a finding is given, in execution proceedings recovery can be made by the petitioner from the owner of aforesaid maruti car. The aforesaid judgment of the Hon'ble Supreme, relied upon by learned counsel for the petitioner, nowhere lays down the law that it was mandatory to implead the second tort-feasor and then decide the claim petition.

In view of the above, no ground is made out to interfere in the impugned order(s).

Resultantly, all the petitions i.e. Civil Revision Nos.7659, 7682 and 7683 of 2015 stand dismissed.

18.11.2015
ajp

(RITU BAHRI)
JUDGE