

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

1. FAO No.1522 of 2016 (O&M)

National Insurance Company Ltd. ...Appellant

versus

Himanshu and others ...Respondents

2. FAO No.1523 of 2016 (O&M)

National Insurance Company Ltd. ...Appellant

versus

Nidhi Narang and others ...Respondents

Date of Decision: **11.03.2016**

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr. R.C. Kapoor, Advocate
for the appellant.

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HARINDER SINGH SIDHU, J.

On 14/15.01.2015 at about 4.30 am, an accident took place wherein, car bearing registration No.HR-11F-4886, struck against vehicle bearing registration No.UP-86F-9871, which was lying turned turtle. In the accident, the occupants of the car sustained grievous injuries on their persons. The driver of the car namely Sonu Saini and one Sonu Narang died in the accident, whereas, the occupants Himanshu and Nidhi Narang sustained injuries. Four claim petitions were filed, which were disposed of vide award dated 21.10.2015 of the Motor Accident Claims Tribunal, Sonipat.

Before the Tribunal only the driver, owner and insurer of Vehicle No.UP-86F-9871 were arrayed as respondents. The owner and insurer of the car No.HR-11F-4886 were not impleaded.

The Tribunal returned a finding that the accident had occurred in part due to the negligence of Sonu Saini. His contributory negligence was assessed at 50% and accordingly, his legal heirs were held entitled to 50% of the compensation assessed. However, the other claimants on the basis of composite negligence of both the offending vehicles were held entitled to whole of the compensation assessed. As the driver, owner and insurer of the car had not been impleaded, the owner, driver and insurer of the offending vehicle No.UP-86F-9871 were held liable to pay the compensation.

Learned counsel for the appellant states that the accident had occurred as a result of the composite negligence of the drivers of both the offending vehicles, who thereby are joint tortfeasors. He argues that though the claimants can initially recover the entire compensation from the appellant, yet the appellant has a right to recover compensation from the owner, driver and insurer of offending vehicle No.UP-86F-9871 to the extent of its negligence. He has argued that the learned Tribunal has erred in law in not granting liberty to the appellants to make the aforesaid recovery.

Reliance has been placed on judgments of Hon'ble the Supreme Court as well as this Court in **Khenyei v. New India Assurance Co. Ltd., (2015) 9 SCC 273** and **New India Assurance Co. Ltd. v. Kesho Ram and others 2012 ACJ 1103 (P&H).**

Having heard Ld. Counsel for the appellant, I am of the view that filing of the instant appeal is not the proper remedy for the appellant.

The question of the remedy available to one of the tortfeasors from whom compensation has been recovered has been considered by the

Supreme Court in ***Khenyei's case (supra)*** and it has been held that in a case where the joint tortfeasor has not been impleaded as a party, the question of the extent of his negligence could not have been decided as apportionment of negligence could not be decided in his absence. It has been held that in such a case, after making the payment, it would be open to the tortfeasor held liable to sue the other joint tortfeasor and recover from him the contribution to the extent of his negligence. For this, the remedy would be to file another suit or appropriate proceedings in accordance with law. It was observed:

“17. The question also arises as to the remedies available to one of the joint tortfeasors from whom compensation has been recovered. When the other joint tortfeasor has not been impleaded, obviously question of negligence of non-impleaded driver could not be decided. Apportionment of composite negligence cannot be made in the absence of impleadment of joint tortfeasor. Thus, it would be open to the impleaded joint tortfeasors after making payment of compensation, so as to sue the other joint tortfeasor and to recover from him the contribution to the extent of his negligence. However, in case when both the tortfeasors are before the court/Tribunal, if evidence is sufficient, it may determine the extent of their negligence so that one joint tortfeasor can recover the amount so determined from the other joint tortfeasor in the execution proceedings, whereas the claimant has right to recover the compensation from both or any one of them.”

The law was summarized as under:

“22. What emerges from the aforesaid discussion is as follows:

22.1. In the case of composite negligence, the plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.

22.2. In the case of composite negligence, apportionment of compensation between two tortfeasors vis-à-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

22.3. In case all the joint tortfeasors 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 tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of the payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/Tribunal, in the main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

22.4. *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 tortfeasor in independent proceedings after passing of the decree or award.”*

In view of this, I find no merit in the present appeals and the same are dismissed.

However, it would be open to the appellant to take any appropriate proceedings to sue the joint tortfeasors in accordance with law.

March 11, 2016
Atul

(HARINDER SINGH SIDHU)
JUDGE