

FAO No. 5235 of 2016 (O&M) and other connected

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

FAO No. 5235 of 2016 (O&M)

Date of Decision: 03.10.2016

New India Assurance Company Limited

.....Appellant

vs.

Vinish Jain and others

.....Respondents

FAO No. 5236 of 2016 (O&M)

New India Assurance Company Limited

...Appellant

vs.

Vinish Jain and others

...Respondents

FAO No. 5237 of 2016 (O&M)

New India Assurance Company Limited

....Appellant

vs.

Yogesh Jain and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

**Present: Mr. Vinod Gupta, Advocate,
for the appellant (s).**

**Mr. Ashwani Arora, Advocate,
for the caveators.**

AMOL RATTAN SINGH, J. (ORAL)

Learned counsel for the appellant has made a two fold contention. Firstly, that the negligence attributed to the vehicle insured by the appellant-company, i.e. bus bearing registration No. HR-65-8904, has been wholly wrongly attributed by the learned Tribunal, inasmuch as it is the admitted case of the parties that the car in which the deceased were travelling, was first hit by a tempo traveler vehicle on the other side of the dual carriage way, and due to the car being hit from behind by the tempo traveler, it was thrown by the impact to the wrong side of the carriage way, on which the bus in question was running and thereafter, the bus hit the car in which the deceased were travelling.

The contention therefore is that the negligence was entirely that of the driver of the tempo traveler, who ran away and was in fact never impleaded as a respondent by the claimants, in the claim petition.

2. The next contention is that the quantum of compensation awarded is highly highly excessive, inasmuch as, as regards Sh. A.P. Jain, he was 70-80 years old and therefore, could not have been earning an income of Rs. 3,72,395/- per annum, as was found by the Tribunal.

As regards Sh. Alok Jain, it is contended that the loss of future prospects of an increased income have been wrongly awarded to him, in view of the fact that he was not in any permanent salaried employment.

3. On the other hand, as regards the issue of negligence, learned counsel for the respondents-claimants, with the claimants being on caveat, has submitted that the car having been hit by the bus in question is not in doubt. Therefore, even though it is also admitted that the car was first hit on one side of the dual carriage way by a tempo traveler due to the impact of

which it came on to the other side of the dual carriage way, after which it was hit by the bus, it cannot be treated as anything other than composite negligence, because even as per the testimony of the driver of the bus himself, i.e. respondent No. 5 herein, he admitted that he could not apply the brakes in time, as a result of which the bus hit the car, leading to the death of all four occupants of the car.

Learned counsel for the appellant, on the other hand, has submitted that the driver was obviously in connivance with the respondents-claimants, inasmuch as, since the bus was admittedly insured, it was known to the driver of the bus that the eventual liability to pay compensation may fall upon the appellant-company and not on the owner and driver.

4. Having considered the aforesaid arguments, I am not inclined to interfere with the finding of the Tribunal as regards the issue of negligence, in view of the fact that it is very well settled law, that the claimants are at liberty to implead any of the tort-feasors in the claim petition and seek appropriate compensation from any/either/both tort-feasors.

Learned counsel for the respondent-caveators has further drawn attention of this Court to the judgment of the hon'ble Supreme Court in **Khenyei vs. New India Assurance Co. Ltd. and others** AIR 2015 (SC) 2261, in which their Lordships eventually, on the issue of the joint liability of tort-feasors held as follows:-

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasors 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 feasons 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 feasons 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. In case 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 tort feason 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 tort feasons. In such a case, impleaded joint tort feason should be left, in case he so desires, to sue the other joint tort feason in independent proceedings after passing of the decree or award.

5. Thus, it is very clear that even if the owner and driver of the other vehicle, that was involved in accident, were not impleaded as respondents in the claim petition, that would not debar the claimants from seeking compensation only from the owner driver and insurer of one of the vehicles involved, i.e. the bus, the owner and driver of the tempo traveler that is stated to have also been involved in the accident not having been impleaded as respondents by the claimants.

Consequently, no determination of the *inter se* negligence in causing the accident, could also not have been gone into by the learned

judgment in clause (iv) thereof, the appellant-insurance company would obviously be at liberty to institute a separate suit by impleading the owner, driver and insurer of the other vehicle involved in the accident, i.e. the tempo traveler, for recovering commensurate share of the compensation awarded by the Tribunal, if the negligence of the driver of that vehicle is found to be proved in such proceedings.

6. Coming to the issue of quantum of compensation, as regards the compensation awarded in respect of late Sh. A.P. Jain, I see absolutely no reason to interfere with the finding of the learned Tribunal, inasmuch as, once the income tax returns filed by the deceased person were duly exhibited, the onus fell upon the appellant-insurance company to prove that such returns were fictitious and that actually he was not earning any income. That not having been done, I see no reason to disturb the finding of the Tribunal with regard to the compensation granted to the respondents-claimants for the death of Sh. A.P. Jain, even as regards the quantum of compensation based upon his assessed income.

7. As regards the compensation granted for the death of Sh. Alok Jain, I am not in agreement with learned counsel for the appellant that loss of future prospects of income could not have been awarded, despite the fact that the issue is before a larger Bench of the Supreme Court in **National Insurance Company Ltd. vs. Pushpa** (2015) 9 SCC 166, because in the present case, as has been shown by learned counsel for the respondents-caveators, documentary evidence was led before the Tribunal to show that the deceased was an income tax payee, with four income tax returns having been led by way of evidence, in respect to the income of the said deceased. Further, it is seen that Ex. P-11, a copy of which has been produced today in Court by learned counsel for the respondent-caveators, shows that his firm, M/s Mahavir Industries, was registered

under the Punjab Value Added Tax Act, 2005 (as applicable to the U.T., Chandigarh), w.e.f. 08.12.2003, with liability to pay tax since than.

Thus, the deceased assessee having filed regular income tax returns, based upon his income from the aforesaid firm, as can be seen from the copy of the income tax returns, with the balance sheet etc. of the firm annexed with the income tax returns, I see no reason to hold that he did not have a permanent source of income.

8. Consequently, with the observation that the appellant-insurance company would be at liberty to recover compensation due to it, if such compensation is found due in appropriate proceedings, from the owner, driver and insurer of the tempo traveler concerned, these appeals are dismissed in *limine* with no order as to costs.

**(AMOL RATTAN SINGH)
JUDGE**

October 03, 2016
nitin/vcgarg

Whether speaking/reasoned	Yes
Whether Reportable	Yes