

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

FAO No. 599 of 2015 (O&M)

Date of Decision: May 29, 2018

United India Insurance Company Ltd.

...Appellant

Versus

Jasbir Kaur and Ors.

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Satpal Dhamija, Advocate
for the appellant-Insurer.

Ms.Amandeep Kaur, Advocate for
Mr.Ashwani Arora, Advocate
for respondent No.1 to 3.

Mr.Pushpinder Kaushal, Advocate
for respondents No.4 and 5.

HARINDER SINGH SIDHU, J.

The appellant-insurer has filed the present appeal challenging the award dated 12.05.2014 passed by the Motor Accident Claims Tribunal, Mohali(for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 29.7.2011 in the area of Kurali Bridge, Kurali a vehicular accident took place. Deceased Sukhwinder Singh along with Harpreet Singh was going from Kurali to Ropar on motorcycle bearing No.PB-12-N-5448. Sukhwinder Singh was on the driver seat while Harpreet Singh was the pillion rider.

Ambulance van bearing registration No.PB-32-G-0737 coming from Ropar side struck against their motorcycle causing Sukhwinder Singh to fall on the road. Meanwhile, a Truck bearing No.PB-32-E-9201 coming from behind crushed the head of Sukhwinder Singh, due to which he lost his life. FIR regarding the accident was also registered.

A claim petition under Section 163-A of the Motor Vehicles Act, 1988 was filed by the legal representatives of the deceased. The driver, owner and insurer of the Maruti Van were impleaded as respondents No.1 to 3, respectively. The owner and driver of the Tanker Truck were impleaded as respondents No.4 and 5. The Ld. Tribunal concluded that three vehicles were involved in the accident. The motor cycle driven by deceased Sukhwinder Singh was first hit by the Maruti Van which caused the deceased to fall down and then his head was crushed under the tyres of the tanker truck. As such, the drivers of the Maruti van and the Tanker truck were both joint tortfeasors. The claimants at their option could seek compensation from both of them or either of them jointly and severally.

The claim petition was allowed. A compensation of ₹ 4,03,000/- was awarded to be paid by all the respondents jointly and severally.

The appellant – insurer of the Maruti Omni Ambulance Van has challenged the award on the ground that the Tribunal having held that the driver of the Maruti van and the Tanker truck were joint tortfeasors, the Tribunal ought to have apportioned the compensation payable by each of them. It is argued that the appellant cannot be held liable to pay the entire compensation in the first instance and then left to file a separate proceedings to apportion the liability as between the joint tortfeasors and then recover

the same. It is hence prayed that the case be remanded back to the Tribunal to determine the inter-se liability of the joint tort feorsors.

It is well settled that in a case of composite negligence plaintiff/claimant is entitled to sue all or any one of the joint tort feorsors and to recover the entire compensation from any one of them as liability of joint tort feorsors is joint and several. If the joint tort feorsors have been impleaded and the evidence on record is sufficient, the Tribunal may also determine inter se extent of composite negligence of each of them. This determination of the extent of negligence between the joint tort feorsors 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. Such recovery can then be made in execution proceedings. In case, there is no such determination, the joint tort feorsor can sue the other joint tort feorsor in independent proceedings after passing of the decree or award.

It has been so held in ***Khenyei v. New India Assurance Co. Ltd.*** (2015) 9 SCC 273 as under:

“What emerges from the aforesaid discussion is as follows :

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feorsors and to recover the entire compensation as liability of joint tort feorsors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feorsors 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 feorsors 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 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 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 tortfeasor in independent proceedings after passing of the decree or award.”

As there is no inter se determination of liability as between the driver of the truck and the Maruti omni van, it is open to the appellant-insurer of the Maruti Omni van to initiate independent proceedings for such determination.

Disposed of .

May 29, 2018

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No