

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

FAO No.7723 of 2015

Date of Decision:-18.01.2018

Smt. Rajwanti Devi and others

...Appellants

Versus

Jitender Kumar Mishra and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashwani Arora, Advocate
for the appellants.

Mr. Sushil K. Yadav, Advocate
for respondent No.3-Insurance Company.

AMIT RAWAL J.(Oral)

The appellants-claimants are aggrieved of the findings rendered by the MACT viz a viz causing a deduction of 50% on the total amount of compensation fastening the liability of contributory negligence.

Mr. Ashwani Arora, Advocate learned counsel appearing for the appellants has submitted that the appellants-claimants were travelling in a vehicle Swift Dezire Car bearing registration No.HR99 Q PT 4126 was driven by driver Anand and therefore compensation was sought against the third party against the insurance company of offending truck bearing Registration No.PB-29-M6341. Had the driver being a claimant perhaps the finding of learned MACT of fastening liability to the extent of 50% would

have been justified and not to the passengers who had no role to play in driving of the vehicle. He has further submitted that the case is of contributory negligence and therefore the insurance company of the truck would be entitled to claim compensation from the insurance company of the car in question. In support of his contentions, learned counsel has relied upon **Khenyei vs. New India Assurance Co. Ltd. and others 2015(2) ACC 657.**

On the contrary learned counsel appearing on behalf of respondent No.3-Oriental Insurance Company submits that there is no illegality and perversity as it has been categorically found that both the vehicles were at fault and therefore attribution of 50% of contributory negligence upon claimant is legal and justified.

I have heard learned counsel for the parties, appraised the paper book and of the view that the reasoning assigned by the MACT is not justified and erroneous. It would be apt to reproduce the principle carved out by Hon'ble Supreme Court in the judgment of **Khenyel's case** (supra) :-

- “(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feors and to recover the entire compensation as liability of joint tort feors is joint and several.
- (ii) In the case of composite negligence, apportionment of compensation between two tort feors 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 feors 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 per pleadings and muchless the evidence reveals that it was Anand driver of the Car bearing registration No.HR99 Q PT 4126 and not the deceased who had unfortunately died in the accident while travelling as a passenger in the aforementioned vehicle. Therefore, the findings of the learned MACT with regard to the attribution of contributory negligence to the extent of 50% upon the deceased is neither here nor there and against the statute of law.

Accordingly, the findings of learned MACT stands modified. The compensation awarded to the tune of 100% viz a viz the claimants, however, in view of the findings rendered by the learned MACT with regard to the contributory negligence, in my view it is a case of composite

negligence therefore, the insurance company of the truck may recover the amount aforementioned from the insurance company of the Car.

With the aforesaid modification, the appeal stands disposed of.

January 18, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No